ton States; to the Committee on Immigration and Naturalization.

303. Also, resolution of the executive committee of the Osage Indian Protective Association, expressing appreciation of the tribe for the work of J. Geo. Wright, superintendent of the tribe, and protecting against statements being made against him by those not connected with the tribe; to the Committee on Indian Affairs.

304. Also, resolutions of the National Association of Railroad and Utilities Commissioners, urging certain changes in the interstate commerce act; to the Committee on Interstate and Foreign Commerce.

305. Also, resolution of certain citizens of Deer Creek, Okla., indorsing the adherence of the United States to the World Court with Harding-Coolidge reservations; to the Committee on Foreign Affairs.

306. Also, resolution of the Commercial Law League of America, indorsing the principle of increased compensation for Federal judges; to the Committee on the Judiciary.

307. Also, resolution of the National Committee for the Prevention of Blindness, urging increased financial support from Congress and additional legislation looking to the control of trachoma; to the Committee on Indian Affairs.

308. Also, resolution of the Better Bedding Alliance of America, asking that the regulation of common carriers be vested in the Interstate Commerce Commission; to the Committee on Interstate and Foreign Commerce.

309. By Mr. GIBSON: Petition of Pierce Lawton Post, No. 37, American Legion, Bellows Falls, Vt., urging Congress to make adequate and immediate provision for the construction of a suitable building to house post office and other governmental agencies; to the Committee on Public Buildings and Grounds.

310. By Mr. GRIEST: Petition of the American Association of Railroad Ticket Agents, favoring legislation charging the Interstate Commerce Commission with the regulation of motor vehicles engaged in interstate commerce; to the Committee on Interstate and Foreign Commerce.

311. By Mr. HUDSON: Petititon of sundry citizens of South Lyon, Mich., urging that legislation be enacted placing the appointment of postmasters under the classified civil service in order that more efficient and satisfactory service may be obtained; to the Committee on the Post Office and Post Roads.

312. By Mr. HUDSPETH: Resolution of the Val Verde Post of the American Legion, commending the action of Col. William Mitchell in his utterances regarding the Air Service; to the Committee on Military Affairs.

313. By Mr. KINDRED: Petition of the Merchants' Association of New York, urging the Congress of the United States to support the debt-funding agreements which have been negotiated by the American Debt Commission; to the Committee on Foreign Affairs.

314. Also, petition of the Colonial Radio Corporation of New York, urging the Congress of the United States to oppose the passage of the so-called Ainey bill, by Senator CUMMINS; to the Committee on Interstate and Foreign Commerce.

315. By Mr. KVALE: Petition of Arthur McArthur Camp, No. 16, United Spanish War Veterans, Department of Minnesota, requesting that Congress enact such measures as may be necessary to establish a uniform and equal standard for rating all United States war veterans who were honorably discharged, both for age, pensions, and for disabilities of service origin; to the Committee on Pensions.

316. Also, petition of the Lutheran Brotherhood of the First Norwegian Lutheran Church, of Duluth, Minn., requesting Congress to combat any attempt undertaken to either repeal or alter the present statute as relates to the eighteenth amendment or the so-called Volstead Act; to the Committee on the Judiciary.

317. By Mr. PHILLIPS: Evidence in support of House bill 7039, granting an increase of pension to Jane E. Francis; to the Committee on Invalid Pensions.

318. Also, evidence in support of House bill 7038, granting a pension to Asilee Armstrong; to the Committee on Invalid Pensions.

319. Also, evidence in support of House bill 7037, granting a pension to Sarah Ann Adams; to the Committee on Invalid Pensions.

320. By Mr. YATES: Petition favoring imposing jail sentences on all violators of the eighteenth amendment, also deportation of all aliens for the first offense of said act, also to make all officers of the law from city to national come under civil service; to the Committee on the Civil Service

SENATE

SATURDAY, *January 9, 1926*

(Legislative day of Thursday, January 7, 1926)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names.

Ashurst	Fess	Keyes	Schall
Bayard	Fletcher	King	Sheppard
Blease	Frazier	La Follette	Shipstead
Bratton	George	Lenroot	Shortridge
Brookhart	Gerry	McKellar	Simmons
Broussard	Gillett	McKinley	Smith
Bruce	Glass	McLean	Smoot
Butler	Goff	McMaster	Stanfield
Cameron	Gooding	Mayfield	Stephens
Capper	Greene	Means	Swanson
Caraway	Hale	Neely	Trammell
Copeland	Harreld	Norris	Tyson
Couzens	Harris	Oddie	Underwood
Curtis	Harrison	Overman	Wadsworth
Dale	Heflin	Pepper	Walsh
Deneen	Howell	Pine	Warren
Dill	Johnson	Reed, Pa.	Watson
Edge	Jones, N. Mex.	Robinson, Ark.	Wheeler
Edwards	Jones, Wash.	Robinson, Ind.	Williams
Ferris	Kendrick	Sackett	Willis

Mr. JONES of Washington. I wish to announce the absence of the Senator from Connecticut [Mr. BINGHAM], due to illness.

The VICE PRESIDENT. Eighty Senators having answered to their names, a quorum is present.

SENATOR TYSON'S JACKSON DAY ADDRESS

Mr. McKELLAR. Mr. President, last night at a meeting of the Southern Society my colleague, the junior Senator from Tennessee [Mr. TYSON], delivered a very patriotic address on the life and character of Andrew Jackson. I ask unanimous consent that it may be printed in the RECORD.

The VICE PRESIDENT. Is there objection? If not, it is so ordered.

The address is as follows:

Address on Jackson Day before the Southern Society of Washington, Willard Hotel, Washington, D. C., January 8, 1926, by Senator L. D. TYSON

Mr. President, ladies, and gentlemen, after hearing the inspiring and eloquent address of Colonel Dickinson which we have heard this evening it may seem superfluous to say more on this occasion.

But we all appreciate that it would be an omission that none of us would be willing to sponsor did we not say something in honor of this great day and the reason for its observance.

The people of our country for more than a hundred years by common consent each year on this day have assembled together and celebrated the most remarkable victory ever gained on the battle field in recorded history—the Battle of New Orleans—and to honor the most remarkable man that ever appeared on the horizon of this Republic—Gen. Andrew Jackson.

Mr. President, you have asked me to make a few remarks on this occasion in honor of this great day and you have limited me to a few minutes.

If I had the eloquence of Daniel Webster or Henry W. Grady I could not do justice to this great subject in many hours' time.

In the short space of a few minutes how impossible it is to say anything worthy of this day.

It would not be appropriate to say anything of a political nature on this occasion, and about the only thing that I can do is to try to bring to your attention the value of the study of the life and times of Andrew Jackson. I believe if you will study his life and the period in which he lived from the cradle to the grave you will find it more thrilling than any novel; that you will learn to appreciate more and more what we owe to the men and the women of the pioneer days.

We have had many great men in our country, and the names of many of them to-day are oftener upon the lips of our countrymen than is the name of Andrew Jackson, but, Mr. President, I believe there is no man whom our country has produced who deserves more from his country than Andrew Jackson.

There never was a greater or more unselfish patriot—nor one who gave at all times more unsparingly or more effectively for his country.

He was born in 1767 of poor parents who had come to America from Ireland in 1765 for the purpose of escaping the oppressions of the British. Shortly after settling in America the father died, and later the whole family was to suffer even a more dire calamity in this far-off America at the hands of the British than they could possibly have experienced had they remained in Ireland. Before the Revolutionary War was over two brothers of Andrew had been killed by the British

and his mother had died as a result of the war. Andrew fought for more than a year in the Revolutionary Army, having joined that army at the tender age of 13 years. He was in several battles, and was thus one of the youngest soldiers who ever went to war.

He was left an orphan at 14 years of age and had no blood kin in America, and with practically no resources and but little education he was compelled to make his way at these tender years by his own unaided efforts.

To such distinction did he finally rise that the place of his birth has been the subject of heated controversy and long discussions, and many chapters of history have been written to show the exact spot where he was born.

Having been born at or near the Waxhaws, on the North Carolina and South Carolina line, both of these States claim him.

But it matters not so much where he was born nor where he lived for the first few years of his life, but it was where he lived and made his home and where he became great that mostly interests us.

It was in that romantic country known as Tennessee, across the Allegheny Mountains, in the great valley of the Mississippi River—that marvelous land in that unparalleled blue-grass region and unsurpassed hunting ground of the Shawnees, the Cherokees, the Creeks, the Choctaws, and the Chickasaw Indians—that he made his home and where he lived and died.

This new and undeveloped country gave him the arena and the greatest opportunity to be found anywhere on the Continent of America for him to display his peculiar and remarkable talents. It was to the beautiful valleys of the Tennessee and the Cumberland that this mighty man of destiny wended his way at the age of 20 to write his name imperishably upon the pages of history.

His talents and his courage were such that he was soon known in this new land as the great pioneer, and the emigrants looked to him as their leader and their protector.

When the State of Tennessee was formed in 1796 Jackson was elected its first Representative in the Congress of the United States. One year later he was elected a Senator from Tennessee.

The duties of a Congressman and a Senator were irksome to his adventurous and impetuous soul. He longed for the outdoor life and the great, free, romantic land of Tennessee, which answered the call of the wild and the adventurous in his nature, and so he resigned his seat in the Senate after two years' service and returned to Tennessee.

He was one of the few men who ever resigned from the Senate of the United States of his own accord. He was one of the few men who ever resigned from the Supreme Court of Tennessee, where he had done a great service in bringing law and order to the new and turbulent State from 1799 to 1803.

During his service as a Representative in Congress he showed himself to belong to the school of Thomas Jefferson, of whom he was a devoted follower, and such was his courage and his idea of democracy and duty to the people that, notwithstanding his love and admiration for Washington, he refused to vote for the congratulatory address on the retirement of Washington from the Presidency in 1797, because he thought it smacked too much of royalty.

Jackson covered himself with imperishable renown and glory as the commander of the Tennessee Volunteers and Militia in the Creek War of 1813 and 1814.

This was the most formidable war ever waged against the Indians on this continent. Jackson commanded more than 3,000 troops in this war, and his troops suffered incredible hardships, but in six months this formidable tribe of Indians, who were aided and encouraged by the British and the Spanish in Florida, were brought to submission and their power was forever broken.

To the eternal credit and glory of Tennessee be it said she agreed to stand sponsor for the payment of this large force which was used in driving the dreaded savage from the confines of the present States of Alabama and Mississippi.

In this war Jackson had gained such renown by his indomitable perseverance, courage, determination, iron will, and fortitude in enduring hardships that he was acclaimed throughout the Nation for his great achievements. He was made a major general in the Regular Army of the United States, and after having taken Pensacola, then held by the Spaniards, he was ordered to the defense of New Orleans.

New Orleans at that time was the only city of importance in the Mississippi Valley and was threatened with a great attack by the British. It was the key to the navigation of the Mississippi River, and under no circumstances could the United States afford to lose this important point.

To give you an idea of the importance which the British attached to it, it is only necessary to say that while the British in all their operations against America in the War of 1812 had never employed all together more than 20,000 men, yet in this case an expedition had been planned to sail from the island of Jamaica consisting of 50 vessels carrying 12,000 veteran troops of Wellington's and 1,000 cannon under Sir Edward Pakenham, a veteran of the peninsular war in Spain and Portugal, who had fought under Wellington and who had conquered and driven from Spain the veteran soldiers of Napoleon. In addition there were nearly 10,000 sailors who were also to be thrown into that battle.

Jackson arrived at New Orleans on December 1, and such was the vigor of his measures that in a few days the courage and confidence of the citizens were restored.

His force consisted of some 800 Regulars and other troops composed of volunteers and militia from Tennessee and Kentucky and Louisiana, amounting altogether to about 6,000 men, most of them equipped only with rifles and muskets and shotguns which they were in the habit of using at home, and many of them with no arms at all. In fact, it was as heterogeneous and undisciplined a lot of soldiers as ever went to battle.

Jackson had announced that he would attack the foe at all costs as soon as they landed on American soil. He swore by "the Eternal" that the foe should not be allowed to remain on the sacred soil of his country.

The British thought the Americans would not dare attack. Little did they know the commander who was pitted against them.

About 12 o'clock in the dead of night on the 23d of December Jackson launched a terrific attack upon the British, which took them wholly by surprise. A great victory was gained and a still greater moral advantage. The British lost 46 killed, 167 wounded, and 64 prisoners. The American loss was about half that number.

Jackson had determined to make his stand behind a small canal called the Rodriguez Canal, and he put every available hand to work deepening and widening this canal and piling the dirt and cotton bales upon one side where he could use them as a breastwork.

For four nights Jackson did not sleep but worked incessantly, using every means at hand to strengthen his defenses.

Sir Edward Pakenham arrived and took command of the British on Christmas day.

On the morning of January 1 Pakenham opened a terrific fire and cannonade upon Jackson's position, but the British were repulsed with heavy loss.

January 8, the fateful day for the British and for the glory of America and of Jackson, opened with a heavy fog. The British attacked with General Pakenham leading his troops as if on parade.

His troops stationed on the canal, Jackson walked incessantly up and down behind his lines encouraging his troops and directing them to hold their fire until the British came so close that the men could see the whites of their eyes. The battle raged for 25 minutes. The sharpshooters of Jackson from Tennessee and Kentucky did terrible execution. The slaughter was appalling. During this short period of 25 minutes 700 British soldiers fell dead, 1,500 were wounded, and 500 were taken prisoners.

Pakenham was killed, followed by General Gibbs, who was next in command, then General Keane fell, being severely, but not fatally, wounded. When the smoke cleared away the Americans found that they had lost but 7 men killed and 13 wounded.

The British retreated in disorder, and left the field of battle and shortly thereafter left the country, and thus was won eternal glory for America and the Presidency of the United States and immortality for Andrew Jackson.

Up to the time of the Battle of New Orleans the War of 1812 was a great humiliation and disappointment to the American people, as they had won no battle of importance during the war, and even the Capitol at Washington had been taken by British troops and burned.

The whole Nation rejoiced over this remarkable battle as being the most glorious victory that had ever been gained by American arms and was balm to their wounds and pride.

Andrew Jackson became from that hour the greatest national hero, with the exception of George Washington, that the American people have ever had.

Jackson's career as President was a stormy one, as his whole life had been.

He was President during one of the most critical and exciting times in the history of the Republic.

Elected as a Democrat, he had pitted against him during his whole presidential career that great triumvirate that has gone down in the annals of our country as three of the greatest men who ever sat in the Senate of the United States—Clay, Calhoun, and Webster. Day after day and year after year the battle between these three giants in the Senate arena and General Jackson in the Executive Mansion was waged with unremitting vigor, fury, and bitterness.

Jackson asked no quarter and gave none, and although these men have never been surpassed in oratory and statesmanship and political sagacity by any men who have lived in our country, and although Jackson was called the backwoods President by many, he finally triumphed over them in every political battle in which they were engaged.

We can not speak of Jackson except in superlatives. He never did things as other men did them. He was successful in every serious undertaking of his life. It is said he fought a hundred battles personal and otherwise, but even in his fights and duels he always came off a victor. He never was subordinate to any man. He never served

an apprenticeship. He seems to have been born to command. A lawyer, planter, United States district attorney, Congressman, twice United States Senator, justice of the supreme court of his State, never an officer until he was made a major general of militia; never a leader in battle until he led an army; never in the Regular Army until made a major general; the Governor of Florida; the victor and hero of New Orleans; the victor in the Seminole War; and twice the President of the United States, and dictator of two of his successors.

Absolute master of every situation and the controller of the destinies of the Republic for 20 years, so much so that the period from 1825 to 1845 is called the Jackson era of the Republic.

Not a great student, but the greatest letter writer of his time; and his State papers are believed to be unsurpassed by any President who has sat in the presidential chair; the greatest Democrat of his time and of all times, Thomas Jefferson excepted.

His will was nearer law in the United States of America for 20 years than that of any other man for even one year. He has been more maligned, abused, and vilified than any man who ever sat in the presidential chair; yet, he never was finally defeated in anything in public or private life.

A man with many faults, it is true, but they were largely the result of environment and the influences and customs of his time.

The most moral and the most continent of men, the tenderest of husbands and the most loving of fathers to his adopted children. Like Washington, God did not give him children because He evidently wanted no comparisons.

He had a will that was as adamant as the rocks of his beloved Tennessee, and an honesty as great, and as scrupulous a regard for truth as any man that lived; the only man who ever rivaled Washington in the affection of all the people, and the most magnetic man that ever held public office in America.

Theodore Roosevelt was the only man of the nineteenth century who ever approached him in magnetism and popularity before the American people.

He hated show and sham and centralization of power and great and overpowering wealth, privilege, and monopoly, believing them inimical to the best interests of the American people.

He believed with all his heart and soul in the rights of the States, but when the Union was threatened, and when what he called his own native State, South Carolina, threatened to go out of the Union, he showed that, while he loved the States, he loved the Constitution of the United States more, and at the crucial time when the country was in a great state of excitement as to what his course would be he appeared at a banquet in this proud city of Washington and, rising in his seat and giving his toast, he spoke those memorable words:

"The Federal Union—it must be preserved."

We have heard of others who have gotten great and everlasting credit for preserving the Union, and while all proper credit should be given to them, Mr. President, I feel that the speaking of these few short words at that time by Andrew Jackson preserved the Union then, and was the means of keeping that sentiment and that determination to preserve it in the minds of the American people until it culminated in lasting success at Appomattox more than 30 years afterwards.

Had there been another than the lion-hearted Jackson in the presidential chair, there might be another tale to tell to-day.

Mr. President, this is a great day. I have been attempting to speak upon a great subject.

While he may not have been the greatest, I say it without fear of successful contradiction that Andrew Jackson was the most remarkable man this country has produced.

No other President died as Jackson died.

It may be said that the power of his will was such that he even determined the day and hour of his death. When he was ready to die he drew his mantle about him, surrounded himself with his friends and loved ones, delivered them a sermon, bade them all an affectionate farewell, expressed the hope that he should meet them all in heaven, black and white alike, and then, and not until then, did Jackson die.

Mr. President, while he belongs to the Nation, Tennessee claims Jackson. He is her patron saint. His memory is enshrined in the hearts of her people and his ashes rest in her bosom.

Near the banks of the beautiful Cumberland River, and near the capital city of Nashville, in that lovely and fertile valley, is the home he loved so well, the stately mansion which he called the Hermitage, preserved by the loving hands of the ladies of the Hermitage Association of Tennessee. Near by in the garden of his home is the shrine of Tennessee, a mecca for all patriotic Americans, and in this lovely old garden is to be found the simple monument which marks the last resting place of Andrew Jackson, and his beloved wife lying by his side.

He scorned the gift of the sarcophagus of a Roman emperor and preferred a simple tomb and an unpretentious epitaph:

"General Andrew Jackson—Born March 15, 1767, died June 8, 1845."

The inscription on Mrs. Jackson's tomb was written by Jackson himself, and in view of some of the ungenerous things that were said of her during Jackson's lifetime and the unchivalrous and unfair criticisms that have recently been made, I wish to quote this inscription here as an example to the men of this age of what a chivalrous and noble gentleman and great American thought of his wife in the long ago when this Republic was still young.

The inscription is as follows:

"Here lie the remains of Mrs. Rachel Jackson, wife of President Jackson, who died on the 22d day of December, 1825, age 61 years. Her face was fair, her person pleasing, her temper amiable, her heart kindly. She delighted in relieving the wants of her fellow creatures and cultivated that divine pleasure by the most liberal and unpretending methods; to the poor she was a benefactor, to the rich an example, to the wretched a comforter, to the prosperous an ornament; her piety went hand in hand with her benevolence, and she thanked her Creator for permitting her to do good. A being so gentle and so virtuous that slander might wound but could not dishonor. Even death, when he bore her from the arms of her husband, could but transport her to the bosom of God."

In this day of divorces and unhappy marriages I would that all men and women could live as happily together as this great man and this pure and noble and gentle woman lived in the long ago.

We hear of the possibility of a great monument being erected in the city of Washington to a great ex-President who died only a few years ago and died long since Andrew Jackson passed away. He is, indeed, a worthy ex-President, too, but, Mr. President, the only statue to Andrew Jackson in the city of Washington stands in front of the White House in Lafayette Square, and I have heard that a suggestion has been made that even this statue should be taken down and placed in some less conspicuous place.

Mr. President, in closing I have a suggestion to make and it is this, that the next great memorial that shall be erected in the city of Washington should include those three outstanding men of America who have no great public memorial to them, and to whom we owe eternal gratitude, and who have left an impress upon America equal to any the world has known and which time can not eradicate, and those three men are Thomas Jefferson, Andrew Jackson, and Woodrow Wilson.

PETITIONS AND MEMORIALS

Mr. KENDRICK presented a petition numerously signed by sundry citizens of Washakie County, in the State of Wyoming, praying for the repeal or modification of the Volstead Act, pertaining to the prohibition of the liquor traffic, which was referred to the Committee on the Judiciary.

He also presented a petition numerously signed by sundry citizens of Converse County, in the State of Wyoming, praying for the passage of legislation strengthening the immigration law so as to make it, if possible, more restrictive in regard to such elements as may be inimical to the best interests of the country, which was referred to the Committee on Immigration.

Mr. WILLIS presented a memorial of sundry citizens of Hocking County, Ohio, remonstrating against the participation of the United States in the Permanent Court of International Justice, which was ordered to lie on the table.

He also presented petitions of sundry citizens of Union and Champaign Counties, in the State of Ohio, praying for the passage of uniform pension laws, which were referred to the Committee on Pensions.

Mr. FERRIS presented petitions of sundry citizens of Detroit, Bay City, Wyandotte, Hart, Muskegon, and Walkerville, all in the State of Michigan, praying for the enactment of legislation to remove or reduce the tax on industrial alcohol used in the manufacture of medicines, home remedies, and flavoring extracts, which were referred to the Committee on Finance.

He also presented memorials of sundry citizens of Pontiac, Adrian, and Kalamazoo, all in the State of Michigan, remonstrating against the participation of the United States in the Permanent Court of International Justice, which were ordered to lie on the table.

Mr. CAPPER presented a petition numerously signed by sundry citizens of Paola, Kans., remonstrating against the participation of the United States in the Permanent Court of International Justice, which was ordered to lie on the table.

REPORTS OF THE MILITARY AFFAIRS COMMITTEE

Mr. WADSWORTH, from the Committee on Military Affairs, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 1481) to authorize the President to appoint Capt. Curtis L. Stafford a captain of Cavalry in the Regular Army (Rept. No. 22);

A bill (S. 1482) to authorize the Secretary of War to grant easements in and upon public military reservations and other lands under his control (Rept. No. 23);

A bill (S. 2037) to amend that provision of the act approved March 3, 1879 (20 Stat. L. p. 412), relating to issue of arms and ammunition for the protection of public money and property (Rept. No. 24);

A bill (S. 2038) to amend the provisions relating to the sale of ordnance and ordnance stores to the Republic of Cuba, contained in the act of August 29, 1916 (39 Stat. L. p. 643) (Rept. No. 25); and

A bill (S. 2274) providing for the promotion of a professor at the United States Military Academy (Rept. No. 26).

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. LA FOLLETTE:

A bill (S. 2312) for the relief of Franklin Gum; to the Committee on Military Affairs.

By Mr. TYSON:

A bill (S. 2313) to provide a site and erect a public building thereon at Knoxville, Tenn.; to the Committee on Public Buildings and Grounds.

By Mr. FERRIS:

A bill (S. 2314) granting a pension to Carrie B. Spangle; to the Committee on Pensions.

By Mr. SHORTRIDGE:

A bill (S. 2315) granting a pension to Elizabeth Gaylord Smith; to the Committee on Pensions.

By Mr. ODDIE:

A bill (S. 2316) for the relief of James E. Jenkins (with an accompanying paper); to the Committee on Claims.

By Mr. SMOOT:

A bill (S. 2317) granting a pension to Anne Christofferson; to the Committee on Pensions.

By Mr. CAPPER:

A bill (S. 2318) granting an increase of pension to Harry G. Dewar (with accompanying papers); to the Committee on Pensions.

By Mr. PEPPER:

A bill (S. 2319) for the relief of Anna Carroll; to the Committee on Claims.

A bill (S. 2320) to safeguard the distribution and sale of certain dangerous caustic or corrosive acids, alkalis, and other substances in interstate and foreign commerce; to the Committee on Interstate Commerce.

By Mr. SHEPPARD:

A bill (S. 2321) to provide for the storage of the waters of the Pecos River; to the Committee on Irrigation and Reclamation.

By Mr. CAPPER:

A bill (S. 2322) to provide for the elimination of the Michigan Avenue grade crossing in the District of Columbia, and for other purposes; and

A bill (S. 2323) to provide for the acquisition of property in Prince William County, Va., to be used by the District of Columbia for the reduction of garbage; to the Committee on the District of Columbia.

By Mr. WADSWORTH:

A bill (S. 2324) for the relief of the New Jersey Shipbuilding & Dredging Co.; to the Committee on Claims.

By Mr. McKINLEY:

A bill (S. 2325) to provide for the erection of a public building at Herrin, Ill.; and

A bill (S. 2326) to provide for the erection of a public building at Benton, Ill.; to the Committee on Public Buildings and Grounds.

By Mr. ODDIE:

A joint resolution (S. J. Res. 38) for the creation of a junior college as a part of the public-school system in Washington, D. C. (with accompanying papers); to the Committee on the District of Columbia.

AMENDMENTS TO TAX REDUCTION BILL

Mr. FLETCHER and Mr. OVERMAN each submitted an amendment intended to be proposed by them to House bill No. 1, the tax reduction bill, which were referred to the Committee on Finance and ordered to be printed.

SENATOR FROM NORTH DAKOTA

The Senate resumed the consideration of the following resolution (S. Res. 104) reported from the Committee on Privileges and Elections:

Resolved, That GERALD P. NYE is not entitled to a seat in the Senate of the United States as a Senator from the State of North Dakota.

Mr. GEORGE. Mr. President, yesterday the Senator from Montana [Mr. WALSH] made reference in a brief address to the Glass case. The Glass case arose in the Senate shortly after—in fact, in the year following—the ratification of the seventeenth amendment to the Constitution, at a time when it is fair to assume the Senate had fresh in its memory the reasons for the seventeenth amendment, the purpose to be accomplished by the seventeenth amendment, and the clear import and meaning of the seventeenth amendment. The Senator from Montana failed to call attention to one important fact, I think, in the Glass case, and I invite the attention of Senators to that fact at this time.

In addition to what the Senator from Montana said, there had been no meeting of the legislature of Alabama after the submission of the seventeenth amendment to the several States for ratification or rejection. Therefore, when Mr. Glass came with his credentials and presented them to the Senate and the question of the authority of the Governor of Alabama to make the appointment was raised, this situation was presented: There having been no meeting of the legislature of that State, the board and general constitutional provision that each State is entitled to equal representation in the Senate would seem to have had peculiar weight and force, and yet, notwithstanding the fact that after the ratification of the amendment the Legislature of Alabama had had no meeting at which it could pass an act responsive to the seventeenth amendment, the Senate held that Mr. Glass was not entitled to take his seat in the Senate, clearly showing that the Senate at that time was duly appreciative of the purpose of the seventeenth amendment, clearly showing that the Senate at that time recognized fully that the purpose of the seventeenth amendment was to take the selection or election of Senators out of the hands of State legislatures and recall the power to the people themselves, so that under the seventeenth amendment every Senator must be elected in the first instance by the people, and every vacancy in the office of United States Senator must be filled in the second place by the people at an election.

It therefore is open to no man to assert here that those of us who have subscribed to the majority report of the Committee on Privileges and Elections are subscribing to a technical resolution, a resolution arrived at upon technical grounds. We invoke the broadest possible grounds in the consideration of this question. No Senator, under the seventeenth amendment, can rightfully take his seat who has not been elected by the people of his State; no Senator can fill a full vacancy in the office of Senator who has not been elected by the people of his State at an election. We invoke that broad doctrine and say that the people of North Dakota have that right under any and every proper construction of the constitution and laws of North Dakota.

The whole question here, Mr. President, is not over the filling of a vacancy, but the whole question, properly considered, involves the right of the governor to make a temporary appointment to a vacancy existing in the Senate of the United States.

Many Senators who have spoken, and doubtless some who will speak, proceed upon the assumption that each State will desire to give to its governor the right to make a temporary appointment to a vacancy existing in its representation in the Senate. That is an assumption that is not based upon the facts at all, because five States have expressly refused, by what they did and by what they expressly refused to do, to give to their governors the right to make such temporary appointment; and grounds of public policy may be invoked in support of that view upon the part of the legislatures of those five States, because those States might have thought that the people should fill the vacancy at an election, for which we plead now and for which we will continue to plead. They might have thought that the people should fill a vacancy at an election unembarrassed and uninfluenced by any advantage that would come to a temporary appointee of the governor by virtue of the fact that the governor of the State had expressed confidence in such temporary appointee.

It is true that the majority of the States have given to their governors the right to fill the vacancies temporarily; but it is altogether certain that what the seventeenth amendment meant to do, and what it did do clearly and in express language, was merely to empower the legislatures of the States to determine that fact for themselves, and if they wished to give to the governor the right to make a temporary appointment, then the governor might be invested by the legislature with such authority under the provisions of the seventeenth amendment. We get nowhere in the consideration of this case when we assume that the legislature of any State wishes to give the governor that power, because that is a matter for legislative consideration and legislative consideration alone.

Most of the States have expressed a willingness that the governor might have the power, but five of the States have declined to invest him with that power. What those who have

subscribed to the majority report in this case insist upon is that the seventeenth amendment shall be circumvented by no device, whether innocently or designedly, but that Senators must be elected by the people in the first instance, and that every vacancy occurring in the office of Senator must be filled by the people; that it is a matter for the legislature of the State alone to determine whether the governor is to be given the power to fill the office temporarily until the people of the State may elect.

Mr. HEFLIN. Mr. President, will the Senator yield to me to ask him a question now?

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Alabama?

Mr. GEORGE. I will yield, Mr. President, but I should prefer not to do so, because I will probably get to what the Senator from Alabama has in mind.

Mr. HEFLIN. I was merely going to ask the Senator a question. Does he have in mind the case of the junior Senator from Indiana [Mr. ROBINSON], who was appointed until the election next November, a much longer time than that for which Mr. NYE has been appointed, or the case of the Senator from Massachusetts [Mr. BUTLER], who was appointed for nearly two years? Neither one of those Senators has been elected by the people.

Mr. GEORGE. No, Mr. President; but the legislatures of both Indiana and Massachusetts and not the governors of those States have determined that there shall be an election, and that is the vital point in this case. Those who say that we who support the resolution reported by the Committee on Privileges and Elections stand upon technical grounds will do well to reexamine the grounds upon which they stand.

Mr. WHEELER. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the junior Senator from Montana?

Mr. GEORGE. I yield, Mr. President.

Mr. WHEELER. The Senator from Georgia admits, of course, that the Legislature of North Dakota did meet and did pass an act?

Mr. GEORGE. I am going to come to that.

Mr. WHEELER. I know the Senator is, but I wish to clear up the record now. The Senator admits, does he not, that the Legislature of North Dakota did meet and did pass an act empowering the governor to make certain appointments? Is not that correct?

Mr. GEORGE. I admit that the legislature did meet and did reenact an act empowering the governor to make certain appointments. I propose to discuss that; there will be no dispute upon that.

Mr. WHEELER. I understand. The only question, then, is whether or not, in the Senator's mind, the legislature gave the governor sufficient power by the provisions of the law which they enacted.

Mr. GEORGE. Oh, no. The act of 1917—and I do not wish to be led astray at this point in my argument—is not responsive to the seventeenth amendment at all in a single particular.

Mr. President, those who say that we are insisting upon technical grounds will do well to reexamine the grounds upon which they stand, because if Mr. NYE can be given a seat here at all it must be upon a process of reasoning not only doubtful at every step of that process but highly technical—technical in the extreme.

We stand upon the Constitution. We say that the people of North Dakota have the right to fill this vacancy by an election. We say the people of North Dakota have the right to fill the vacancy at an election, not at the grace of the governor but under the mandate of the laws of North Dakota; not at a time when he wills to call the election but as the legislature may direct.

I call attention, Mr. President, to the Glass case, and I desire to digress here from the line of my argument to say that not only Republicans who may have subsequently voted for the seating of Mr. Newberry in the Senate but some eminent Democrats at a time when the seventeenth amendment was fresh in the memory of the Senate voted to deny Mr. Glass the right to a seat, and they voted to do so though the provision of the Constitution then existed that each State should have equal representation in the Senate and that no State should be denied its equal representation except by its consent. Those Democrats voted to deny Mr. Glass a seat upon the just ground that the Governor of Alabama did not have the authority to make the appointment, though there had been no meeting of the Legislature of Alabama after the ratification of the seventeenth amendment and up to the day when the credentials of Mr. Glass were voted on in the Senate.

The Senator from Missouri [Mr. REED] on yesterday said that if the appointment was fair, if there was no suggestion of fraud, and if the people of North Dakota had spoken through their governor, their voice should be taken, and for himself he would take it unless there were very clear and strong reasons submitted to him to the contrary. Yet the Senator from Missouri not only voted against the seating of Mr. Glass but spoke against seating him, and I undertake to say that no more vitriolic speech was ever made in the Senate in condemnation of that easy-going political philosophy that would ask what is the Constitution among friends, than was made in the speech of the Senator from Missouri, who voted against the seating of Mr. Glass. Not only that, but Mr. Pomerene, the then Democratic Senator from Ohio, voted against Mr. Glass taking a seat here, and not only he, but the eminent Senator from Montana [Mr. WALSH], had a leading part in that contest and spoke and voted against Mr. Glass taking a seat in this body; and not only he, Mr. President, but an eminent Senator from my own State, who I undertake to say was an able lawyer and a man fully capable of appreciating not only the Constitution but every just principle of government, Senator Bacon, from my State, was paired against Mr. Glass, against a man of his own political faith and creed who came here when the Legislature of Alabama had not met after the ratification of the seventeenth amendment and when a statute in all respects identical with the very act under which Mr. NYE claims his right to take a seat existed in the laws of Alabama.

Mr. President, it is quite true that many eminent Democrats took the contrary view and made strong arguments in favor of that view; but it is also quite true, as the Senator from Montana yesterday pointed out, that there was in the Glass case an additional question of great moment and importance. That question arose out of the fact that Mr. Glass had been appointed to a vacancy which had occurred in an office which had in the first instance been filled not under the seventeenth amendment but under the old Constitution, and it was insisted that with reference to the filling of terms in such office of Senator the old Constitution and not the seventeenth amendment applied. They invoked the third and last clause of the seventeenth amendment with much force and with much reason. Notwithstanding the fact, however, that under the old Constitution the direct power was given by the Federal Constitution itself to the governor of the State to fill temporarily a vacancy in the office of Senator of the United States, the Senate then did not yield to the argument, if it be an argument, that every State is entitled to two Senators here; that the States made the Government and not the Government the States; that without the States the National Government itself can not exist.

Mr. President, if there is any proposition well settled in the Glass case upon the plainest principles of reason and of morality, to say nothing of technical law, it is that the seventeenth amendment did require affirmative action after its ratification, or affirmative action responsive to it; or obviously passed in view of the ratification of the seventeenth amendment; and why?

Mr. NEELY. Mr. President, will the distinguished Senator from Georgia yield to me?

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from West Virginia?

Mr. GEORGE. I yield, Mr. President.

Mr. NEELY. Does the Senator think that a decision settles anything if rendered by 61 judges and the majority is merely one in favor of the decision? In other words, if there are 30 votes cast against the decision to which the Senator refers as a precedent, and 31 votes are cast for it, is there not such a division of opinion that such a decision ought not to be considered a precedent?

Mr. GEORGE. Mr. President, it matters not by what margin the decision was reached; it was a decision of the Senate.

Mr. WHEELER. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Montana?

Mr. GEORGE. Certainly, Mr. President.

Mr. WHEELER. The Senate overruled itself just the other day; did it not?

Mr. GEORGE. I do not care to go into collateral matters, Mr. President.

Mr. WHEELER. No; but when the Senator is citing the Glass case as a precedent I want to call attention to the fact that the Senate overrules itself.

Mr. GEORGE. I am not asserting that the Senate is bound by anything it did yesterday or last week.

Mr. WHEELER. But the Senator is setting up this case as a precedent; and I simply want to call his attention to the fact

that one day the Senate sets up one precedent and the next day it sets up another one, depending upon the number of Senators here.

Mr. GEORGE. Mr. President, it is a precedent, and what I am trying to say is that it is a precedent made in the shadow of the adoption of the seventeenth amendment, when the very Senators who proposed it—able Senators—were here; and, further, that the Senators who then voted against Mr. Glass were not all Republicans, but many of them were among the most eminent Democrats of the country.

Mr. President, what I was saying was that the seventeenth amendment clearly demands legislative action in each State responsive to that amendment before the governor of the State is authorized to make a temporary appointment; and why do I say that? I say it because prior to the adoption of the seventeenth amendment the legislature of no State had any authority to pass any law with reference to the filling of a vacancy in the office of United States Senator, either temporarily or for the full term. It was a matter that was dealt with by the Federal Constitution.

The State legislatures had no power over it, and it is not to be presumed that they would undertake to enter a field where all that they might do would amount to no more than a mere repetition of what already the governor of each State had been expressly empowered to do by the Federal Constitution itself. Therefore the seventeenth amendment clearly demanded legislative action in each State responsive to that amendment; and that was the view even of the minority in the Glass case. It was not the view merely of the majority. It was not the view merely of those who thought that Mr. Glass was not entitled to his seat. It was the view of Senator Bradley, who filed the minority report and ably debated it on this floor. It was the view of Senator Bradley not only that there must be legislative action in Alabama, but that there had been no legislative action in Alabama providing the machinery for the election of a Senator in that State; and therefore, there being no such machinery provided, responsively at least to the seventeenth amendment, that there could be no election in that State, and that the old constitution still applied, and the governor of that State had the right to make the appointment of Mr. Glass. Notwithstanding the fact, however, that upon that premise both the majority and the minority were in substantial agreement, notwithstanding the other facts to which I have but briefly adverted, notwithstanding the presence of every provision in the Constitution now invoked and the philosophy underlying it, the Senate, before the State of Alabama had had a session of its legislature after the ratification of the seventeenth amendment, denied to Mr. Glass his right to a seat in this body upon the plain ground that the governor of that State had not the power to make a temporary appointment.

Mr. President, with these brief remarks regarding the seventeenth amendment let us proceed directly to the real question before the Senate.

It is in the record here that the late Senator Ladd died on June 22, 1925; that on the 14th of November, 1925, the Governor of North Dakota issued his certificate to Mr. NYE in which he recited that Mr. NYE was appointed to serve as Senator until his successor could be elected at an election which the certificate recites was called for June 30, 1926. Yesterday I called attention to this fact, not for the purpose of indicating at all that the Legislature of North Dakota might not have provided for the filling of the vacancy on June 30, 1926, but for the purpose of calling attention, if I could, to the vital and controlling fact that the legislature itself had wholly failed to direct any election at which the people of North Dakota should be given a chance to exercise their right under the seventeenth amendment to the Constitution.

The authority for that certificate by the governor depends upon one or two provisions, the first a section of the North Dakota constitution, and to that I refer.

Section 78 of the North Dakota constitution reads as follows:

> When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

It is said that this constitutional provision furnishes authority for the governor's appointment of Mr. NYE. The Senator from Montana [Mr. WALSH] yesterday referred to the fact that this constitution was adopted by the people of North Dakota preparatory to statehood. It was an assumption of the responsibilities of statehood. It was a provision, of course, clearly made for such offices as the State might be required to have, perforce, of necessity. Section 78 of this constitution, however, was adopted in 1889, many years before the adoption of the seventeenth amendment to the Constitution of the United States. It can not be said in any respect to be responsive to the seventeenth amendment. It can not be even imagined that the people of North Dakota were contemplating not only the adoption of the seventeenth amendment but the exact provisions, terms, limitations, restrictions, and powers granted under it. You can never anticipate the grant of a constitutional power and you never can anticipate the form in which a constitutional grant of power will be made.

Mr. HEFLIN. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Alabama?

Mr. GEORGE. I do.

Mr. HEFLIN. I want to ask the Senator right there if he takes the position that North Dakota would have to reenact that provision in its constitution after the adoption of the seventeenth amendment? Could it not leave that provision in there, if it were satisfied with it, and would it not still be in full force and effect on the people of that State and on the governor?

Mr. GEORGE. Oh, yes, Mr. President; it does not affect the seventeenth amendment in one way or the other. The people could leave it in there, and it would be in full force. They could take it out, and it would not affect the case. It has not anything to do with it.

Mr. HEFLIN. But they left it in there.

Mr. GEORGE. Oh, yes.

Mr. HEFLIN. Then, following the seventeenth amendment, they reenacted the statute which gave the governor authority to fill all vacancies.

Mr. GEORGE. Mr. President, that is clearly not a question. I do not mind yielding to questions, but that is clearly not a question. It is an argument, and it is open to the Senator to make the argument in his own time.

Mr. FRAZIER. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from North Dakota?

Mr. GEORGE. I do.

Mr. FRAZIER. I should like to ask the Senator from Georgia, in his interpretation of the seventeenth amendment to the Constitution where it provides that the governor may appoint as the legislature may direct, or words to that effect, if he thinks from studying the law that action on the part of our State legislature would be required before the Governor of North Dakota could call an election to fill this vacancy?

Mr. GEORGE. Mr. President, I expect to get to that. That comes under the argument on the statute of March 15, 1917, and I expect to get to it. I beg the Senator not to anticipate me. His mind overruns mine, but I am going to get to it.

Mr. BRATTON. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from New Mexico?

Mr. GEORGE. I yield.

Mr. BRATTON. Will the Senator give us his views upon this question: If a legislative body may legislate in anticipation, I should like his views upon the question whether the language in the constitutional provision to which he now is directing his attention is sufficiently broad. If the legislature had passed a general statute, after the seventeenth amendment became effective, in identically the same language that the constitutional provision of North Dakota is in, would that, in the opinion of the Senator—particularly the language "when a vacancy in any office occurs"—be sufficient to delegate to the governor the authority to make a temporary appointment? I want the Senator's views upon the four corners of the constitutional provision, as to whether it is sufficient.

Mr. GEORGE. I do not think it is sufficient, but I do not think it necessary to go quite to the full extent indicated by the question asked me; but I will say to the Senator that I propose to discuss that matter.

Mr. BRATTON. Very well.

Mr. GEORGE. Mr. President, I have already said that section 78 of the constitution of North Dakota was not responsive to the seventeenth amendment, because passed nearly a quarter of a century before the ratification of the seventeenth amendment; and that it is in no sense nor in any particular responsive to the seventeenth amendment. Now, what does the seventeenth amendment provide? The seventeenth amendment provides for the filling of the office of Senator by an election of the people, and it provides further that in case of a vacancy in that office the governor of the State shall issue his writ of election to fill that vacancy; but it provides that the legislature of the State may empower its governor to make a temporary appointment until the people can fill the vacancy as directed by the legislature itself.

Section 78 of the constitution of North Dakota is not a legislative act. It is not the product of the legislature of that State at all. Under the seventeenth amendment the power is delegated to the legislature of the State to empower the governor of the State to make the appointment. It is said that that is technical reasoning. It is not technical reasoning; it is substantial reasoning. Here are the people in their sovereign capacity, when they are engaged in the making of a constitution, and they have inserted section 78 in their constitution, and it is said that that broad, general provision ought to suffice for any subsequent legislative act. The answer is that it is not responsive to the seventeenth amendment; that the seventeenth amendment delegates the power to the legislature of the State; that the power must be exercised, if at all, by the delegatee of that power and can not be exercised by any other person or set of persons; and for the additional reason that the legislature is not only to decide for itself whether it wishes to give its governor the right to make a temporary appointment, but the legislature—not the constitution, but the legislature itself—is to go further.

Mr. NORRIS. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Nebraska?

Mr. GEORGE. I yield.

Mr. NORRIS. For the purpose of getting the Senator's idea on that particular point, I would like to ask him this: If the people of North Dakota had, under the initiative provision of their constitution, initiated a law which, as far as its wording was concerned, would be entirely satisfactory and give the proper authority to the governor; and if that law had been passed by a vote of the people without having been passed by the legislature itself, would that, in the Senator's judgment, give the governor the proper authority?

Mr. GEORGE. Mr. President, I do not think it would, unless it were responsive to the seventeenth amendment.

Mr. NORRIS. I am assuming that it would be responsive.

Mr. GEORGE. Is the Senator assuming that it would have been responsive a quarter of a century before?

Mr. NORRIS. Oh, no.

Mr. GEORGE. Or that the amendment was ratified subsequently?

Mr. NORRIS. I want to get the Senator's idea on the point as to whether by fair implication in construing a case of this kind, if the enabling law were passed by the people themselves on a direct vote under the initiative provision of the constitution, we are going to be so technical as to say that the governor had no authority to appoint, because the seveneenth amendment provides that the legislature shall pass the law.

Mr. GEORGE. That is not the case here at all.

Mr. NORRIS. I understand that is not this case, because there was no such law, but the Senator is arguing the point that the seventeenth amendment requires action by the legislature and, therefore, that a State constitutional provision adopted before or even afterwards would not comply with that amendment. I want to ask the Senator if, in his judgment, an initiatory law would comply with it. I am seeking only to get the Senator's viewpoint. I have great respect for his opinion.

Mr. GEORGE. When does the Senator mean to indicate that this law was enacted?

Mr. NORRIS. It was not enacted.

Mr. GEORGE. I know, but in the supposititious case put by the Senator, does he mean the law was enacted prior to, or in contemplation of, or subsequent to the ratification of the seventeenth amendment?

Mr. NORRIS. Any one of the three. Let us assume for the purpose of the question that it was enacted after the adoption of the seventeenth amendment.

Mr. GEORGE. Mr. President, even if it were done after the adoption of the seventeenth amendment, it would not be a strict compliance with the Federal Constitution; but I do not care to go into that question. If the Senator is really interested in that point, I refer him to a consideration of the same question, in one phase or another, that did arise on the ratification of the eighteenth amendment and certain subsequent efforts upon the part of the States to withdraw their ratifications of the amendment. If I may proceed now, I think I will discuss the additional feature of the constitutional provision, which may interest the Senator from Nebraska.

I have said that this constitutional provision could not be held fairly to be responsive to the seventeenth amendment, because it came a quarter of a century before the seventeenth amendment was ratified. I have said that the seventeenth amendment delegated the authority to the legislature to act and did not delegate it to the people in their sovereign capacity, because the people in their sovereign capacity usually lay down broad and general principles. They do not provide for specific cases. It would take an extreme case, and it is hard to imagine such a case, when the people, in their sovereign capacity, while engaged in making a constitution for their State, could dispense with the necessity of having the legislature of the State exercise the power delegated by the seventeenth amendment to the legislature of the State.

Section 78 of the constitution of North Dakota again has no application here, because by its very terms it says that the governor may appoint to this vacancy which may arise from any cause, where no mode or provision is made either by the constitution or laws, for filling the vacancy. At all times there was a method provided for filling a vacancy in the office of United States Senator. At the very time the constitution of North Dakota was adopted, and at every moment of time up until the ratification of the seventeenth amendment, and at every moment of time since the ratification of the seventeenth amendment, another method is provided for filling vacancies in the office of the United States Senator. It therefore had no application.

It is wholly unnecessary, of course, to argue that the Constitution of the United States is at once the supreme law, not only of the United States, but of the State of North Dakota, and I take it that it would be wholly unnecessary to say that where the Federal Constitution prior to the adoption of the seventeenth amendment provided for an election of Senators by the legislatures of the States, provided for the filling of vacancies in the office of Senator by an election of the legislature of the State, and conferred directly upon the governor of each State the power to make a temporary appointment until the next ensuing legislature in that State should meet, there did exist at every moment of the time since section 78 of the North Dakota constitution came into being another and a different method for filling the vacancy, another and a different method for doing the very thing which the broad power conferred upon the Governor of the State of North Dakota by section 78 of the constitution of that State did invest him with, in respect, of course, to all State offices.

The constitutional provision, however, undertakes to and does empower the governor, where no other method is provided either by the constitution or laws for the filling of a vacancy, to fill vacancies in office. The Legislature of the State of North Dakota, the people of the State of North Dakota in their sovereign capacity, have utterly no power to empower their governor to fill a vacancy in the office of United States Senator by appointment, because the seventeenth amendment expressly withdraws every power theretofore granted and reinvests the people with the authority to fill every vacancy in every senatorial office by election and not by appointment.

Oh, but it is said, the greater includes the less. The greater what includes the less? The greater includes the less, certainly, if the less is a component part of it. But can any man define what is a temporary appointment in duration of years, or days, or months? Neither the Legislature of North Dakota, nor the people of North Dakota, nor the people of any other State, have the right to fill the vacancy. They can only empower the governor to fill temporarily that vacancy until the people elect, as the legislature shall direct.

Can anyone define a temporary appointment? Why engage in metaphysical argument that the greater includes the less? The greater does include its component parts, but a temporary appointment is not a component part of the entire residue of a deceased Senator's term.

Mr. NEELY. Mr. President——

The VICE PRESIDENT. Does the Senator yield to the Senator from West Virginia?

Mr. GEORGE. I yield.

Mr. NEELY. Does the Senator think that the appointment of Mr. BUTLER, for instance, by the Governor of Massachusetts, for a term of two years, lacking a few days, was a temporary appointment within the purview of the language of the seventeenth amendment?

Mr. GEORGE. If the Legislature of Massachusetts considered that question and determined it, I should say it had the right to do it; but the Legislature of Massachusetts had the right to do it and the power to do it, and it alone had that power, not the Governor of Massachusetts.

Mr. NEELY. Mr. President, if the Senator will further yield, I am asking him a question which I think he can answer without making an argument, if he will condescend to do it. I asked him if he thinks that the appointment of Senator BUTLER for a period of practically two years was a temporary appointment within the purview of the seventeenth amendment.

Mr. GEORGE. I have answered the question directly, Mr. President. I said that if the Legislature of Massachusetts

considered the question and fixed a time two years later when the election should take place to fill the vacancy, it was within the competency of the Legislature of Massachusetts to determine that fact under the seventeenth amendment. It could never be held otherwise, unless there was a plain, palpable purpose upon the part of the legislature to clearly circumvent the provisions of the seventeenth amendment. I have not before me the Massachusetts act, I do not know its exact terms and provisions, but I have answered the question as directly as I can.

Mr. NEELY. Then, Mr. President, if the Senator will yield for one more question, if the Senator believes, as his language indicates he does believe, that the appointment of Senator BUTLER for practically two years is a temporary appointment, can he contend logically that the appointment of Mr. NYE for a period of 7 months and 16 days is a permanent appointment, or that it violates the spirit of the seventeenth amendment providing for temporary appointments?

Mr. GEORGE. Mr. President, clearly the Senator is again making an argument in my time. I am not saying what a temporary appointment is, but I am asking any Senator to define what, in length of time, a temporary appointment is. Nobody but the legislatures of the several States has the power to define it, not the governor of any State, and that is the vital point in this whole case.

Mr. NEELY. Will the Senator permit me to answer the question he has asked?

The VICE PRESIDENT. Does the Senator from Georgia yield further?

Mr. GEORGE. I yield.

Mr. NEELY. As a definition of a temporary appointment I want to lay this down as a definition that is appropriate in response to the Senator's question. Any appointment for a term shorter than another appointment which the Senator says is temporary is a temporary appointment.

Mr. GEORGE. Oh, yes, Mr. President; when once you have defined the term, it is; but for what length of time can the temporary appointment be made? For what particular number of days or months or years may the temporary appointment be made? May it be determined by the will of the governor, as has been attempted in this case, in order to cure a clear infirmity in the statute, or must it be determined by the Legislature of North Dakota as the Constitution of the United States provides?

Mr. President, I come back to the proposition that under section 78 of the constitution of North Dakota the power is conferred upon the governor to make appointments and to make an appointment only to a vacancy, not a temporary appointment, but for a full vacancy, the full residue of the time, and only where there is no other method or mode provided by the constitution or laws for the filling of that office.

Mr. WALSH. Mr. President, will the Senator suffer an interruption, although it is in a way a diversion from his argument?

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Montana?

Mr. GEORGE. I yield.

Mr. WALSH. The question that has just now been discussed briefly is one on which I hope no one will thus hastily stand committed. It is a most serious question that some day or other may confront us under the seventeenth amendment to the Constitution. I think that there is the gravest kind of doubt as to whether the various statutes passed by the legislatures of the States, providing that the election shall be held at the next general election, can be regarded as valid under the amendment.

The amendment, it seems to me, unquestionably reposes in the governor the power to fix the time at which the general election shall be held. If Senators will observe, it is unqualified, when vacancies happen in the representation of any State in the Senate, that the executive authority of such State shall issue writs of election to fill such vacancies, and it can determine unquestionably under settled authority when that election is to be held. The legislatures of a great many States have stepped in and endeavored to take that power away from him by providing that the election shall not take place until the next general election. Under such an act the Governor of the State of Massachusetts was by the Legislature of the State of Massachusetts divested of his power under the amendment, provided that construction is correct. I have always felt that the subsequent provision of the amendment of the Constitution—

that the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct—

has no reference at all to the power. The legislature, in my judgment, has no power to fix the time. The expression "as the legislature may direct," in my judgment, refers to the manner in which the election shall be conducted, whether it shall be conducted under the general laws or whether they shall make special provision for the election of a United States Senator.

Mr. GEORGE. I wish to say that on what the Senator from Montana has said we are not in any serious disagreement, but my contention is that there must be some direction by the legislature. It need not fix the exact time, but there must be a provision for the holding of the election.

Mr. WALSH. All I desire to add in this matter is that it seems to me the Constitution can not possibly mean that the legislature may fix the time, because, as suggested, in the case of the late Senator Lodge he had four years of his term yet to serve. I question whether the legislature would have the right to say that the governor's appointee should hold for the remainder of the unexpired term when an election should be held, or say that an election shall be held not at the next succeeding general election but the election after the next succeeding general election, which would enable him to hold over two years and possibly as long as four, or to say that he should hold until the second general election after that time, which would give the governor's appointee an opportunity to serve for nearly six years under possible circumstances.

Mr. NEELY. Mr. President——

The PRESIDING OFFICER (Mr. SHORTRIDGE in the chair). Does the Senator from Georgia yield to the Senator from West Virginia?

Mr. NEELY. Will the Senator from Georgia permit me to ask the Senator from Montana a question?

Mr. GEORGE. Yes; I yield for that purpose.

Mr. NEELY. I wish to inquire of the eminent Senator from Montana if he believes that any appointment for two years to fill a vacancy in the United States Senate is really in accord with the spirit of the seventeenth amendment to the Constitution?

Mr. WALSH. I am very clearly of the opinion that it is not.

Mr. NEELY. That is my opinion, too.

Mr. GEORGE. I do not want to go into that question because manifestly it is a very difficult question.

Mr. SWANSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Virginia?

Mr. GEORGE. I will yield for a question.

Mr. SWANSON. I simply want to ascertain this: Did I understand the Senator to contend that there must be affirmative action on the part of a legislature before we can have an election of a Senator?

Mr. GEORGE. Yes; unless appropriate machinery existed.

Mr. SWANSON. Then if an election is called by the governor at this time in North Dakota and the election is held, it would be void because the legislature has not directed an election?

Mr. GEORGE. No; I do not contend that.

Mr. SWANSON. Under what authority, then, can the governor order the election?

Mr. GEORGE. Will the Senator permit me to proceed, and I think I will get to that very point in the case before I conclude.

Mr. President, I was proceeding to say that this power delegated to the legislature of the State must be exercised by the delegatee of the power, by the legislature, because the seventeenth amendment not only leaves it in the discretion of the legislature to determine whether or not they desire to invest their governor with the power to make the temporary appointment, but it provides that in case they do invest the governor with the power to make the temporary appointment, that then the governor may make it until the people fill the vacancy as the legislature may direct. It clearly contemplates legislative action, not action by the people in their sovereign capacity. It clearly contemplates responsive action by the legislature of the State itself.

The legislature is that body through which the will of the people in at least the vast majority of the States, and I might say in all of the States, could express their wishes upon this important question. The seventeenth amendment having given the power to the people to fill a vacancy, it declared expressly that the governor should issue his writ of election upon the happening of a vacancy, and then it gave to the legislature of the State, to no one else, to no other body, to no other authority, the sole power of determining whether the legislature wished to empower the governor to make a temporary appointment. Not only that, but it went further and said:

Until the people of the State fill the vacancy at an election as directed by the legislature—

Or—

as the legislature may direct.

If we say that that does not mean that the legislature shall fix the time, either exactly or within any limitation, so that it may be made certain, yet there is some direction that the legislature must give, because in the first instance the seventeenth amendment has contemplated that the legislature alone must empower its governor, if the governors have that power.

So I say, Mr. President, looking at the constitutional provision of North Dakota, that it can not have application here, because it is not an act of the legislature; it is not an act of the delegatee of a power, because it is not responsive to the seventeenth amendment, as it came a quarter of a century before the seventeenth amendment was ratified, because it does not undertake to give the governor the power to make a temporary appointment, but it does give him the power to fill the whole unexpired term of a Senator who, either by death or for any other reason, has been removed from his seat in this body. And finally it can have no application, because at all times under the old constitution and under the new constitution there was a different method provided for the filling of a vacancy in the office of United States Senator.

Now, let us pass to a consideration of the act of March 15, 1917. If there is any authority here at all under which the Governor of North Dakota could make this appointment, if there is any enabling act at all to be found in the laws of North Dakota, it must be found in the act of 1917. We might as well admit that the act of 1917, of course, was reenacted after the adoption of the seventeenth amendment. There is no need to raise any confusion upon that point. It is true that it was but a reenactment so far as the provision is concerned upon which the asserted power of the Governor of North Dakota is here vested. It is a reenactment not by virtue of construction, not by virtue of a technical construction. It is a universal rule of law that when the legislature reenacts an existing law in the same language it but gives continuity to the law. There is no creative stroke. It is not a new law. It carries the same meaning. It must be interpreted as before. Not only is that true but it is a universal rule that even where the language of the new act is substantially the same as the language of the old act, it preserves merely the continuity of the statute and does not create a new statute. But the act of 1917 does not leave anything to construction whatever. It does not give occasion for the application of this universal rule of construction.

Mr. HEFLIN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Alabama?

Mr. GEORGE. I decline at this time unless the Senator desires merely to ask a question.

Mr. HEFLIN. I was going to ask a question.

Mr. GEORGE. I must decline to yield just at this moment.

Mr. HEFLIN. Very well, if it will disturb the Senator.

Mr. GEORGE. I am undertaking to finish my speech.

Mr. HEFLIN. I expect to reply to the Senator, and I do not want to take his time.

Mr. GEORGE. I will yield for a question in just a moment.

Mr. President, the act of March 15, 1917, is declared an act amending. What did it amend? It amended a wholly different subsection from the one here invoked. It amended a section giving the governor the power to advise and consent to the appointment by a board of county commissioners to a State's attorney office—

An act amending and reenacting section 696 of the Compiled Laws of North Dakota for 1913, relating to the filling of vacancies.

Mr. COPELAND. Mr. President, may I ask the Senator if it is not possible that that particular language is simply the expression of the annotator? It is not necessarily a part of the act itself and included in the part which was passed upon by the legislature.

Mr. GEORGE. I think it can not be said to be the work of the annotator. Let me read it to the Senator:

An act amending and reenacting section 696 of the Compiled Laws of North Dakota for 1913, relating to filling vacancies.

Be it enacted by the Legislative Assembly of the State of North Dakota, That section 696 of the Compiled Laws of North Dakota for 1913 be amended and reenacted as follows.

It is the old law, nothing but the old law. We do not have to invoke the technical rule of construction and say that we must give it the same interpretation that we were bound to give it prior to the 1917 amendment, because the legislature itself has said that "we but intend to reenact what we had in our laws before."

Mr. WHEELER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Montana?

Mr. GEORGE. I will yield for a question.

Mr. WHEELER. What could be the purpose of the legislature in reenacting the same law?

Mr. GEORGE. I will answer the Senator. The history of the legislation has been gone into in some detail, but I will repeat it. It was stated on the hearings before the Committee on Privileges and Elections. The Senator from North Dakota [Mr. FRAZIER], the colleague of the late Senator Ladd, was present at those hearings. The Senator from North Dakota [Mr. FRAZIER] was in 1917 the Governor of the State of North Dakota. He did not raise his voice in protest against anything that was said in the hearings before the Committee on Privileges and Elections. I do not undertake to bind him by all that was said, but when facts were discussed which occurred at the time when he was governor of the State I must assume and I think I am warranted in assuming that those facts were correctly stated.

Mr. WHEELER. Mr. President——

Mr. GEORGE. Will the Senator let me answer his question?

Mr. WHEELER. I do not think the Senator is answering my question.

Mr. GEORGE. I am proceeding to answer the question.

Mr. WHEELER. The Senator is getting far away from my question, it seems to me. I would like to have him answer the question as to whether he does not feel that when the legislature reenacted the statute they had some purpose in mind.

Mr. GEORGE. Mr. President, I am proceeding exactly to say what purpose they had in mind, if the Senator will permit. I do not mind the interruptions. I only sought to avoid unnecessary interruptions in the interest of the conservation of time. I am proceeding to answer the Senator's question.

After the enactment of section 686, if the Senator will permit me, it was said without dispute that the Legislature of North Dakota had by another act given to the governor the power to remove State's attorneys. Such attorneys were being removed in parts of North Dakota because of their failure to prosecute the violators of a certain law, which, I believe, was said to be the prohibition enforcement act. Under section 686 as it stood before amendment, when the governor removed a State's attorney, if the county commissioners desired, that same State's attorney—or one with the same sympathy, so far as that law was concerned—could be appointed. Therefore, in order to correct that evil, in order to enable the governor to have some voice about what kind of State's attorney should be appointed in lieu of a State's attorney removed by the governor under another law of North Dakota, it became necessary to amend this act. The provision in the act which they sought to amend relating to State's attorneys occurred in the old section 686. When they were amending that act they necessarily, I assume, wished to preserve all of the other provisions of the act with which they were not at all dealing.

Mr. WHEELER. Mr. President, will the Senator yield right there?

Mr. GEORGE. I will.

Mr. WHEELER. The question I desired to ask the Senator from Georgia is this: It was not necessary, was it, for the legislature to reenact the old law in order to amend the provision to which the Senator has called attention?

Mr. GEORGE. The draftsman of the act might have gone at it in a different way. This was a perfectly appropriate way of amending it, however.

Mr. WHEELER. Of course, it was a possible way, but it was not a necessary way, and it is not the usual way in which statutes are amended, is it?

Mr. GEORGE. Mr. President, it is the usual way in which statutes are amended in many States. It is a very appropriate way.

Mr. BRUCE. Mr. President, if I may interrupt the Senator from Georgia, I will say it is the universal way of amending statutes in the State of Maryland, from which I come.

Mr. GEORGE. It is a proper way of amending a statute.

Mr. WHEELER. I will say, however, to both my friends that it is not the way which is adopted in the State of Montana, and it is not the usual way.

Mr. GEORGE. It may not be; but that was purely at the election of the draftsman. The fact is, however, that the Legislature of North Dakota did amend the act in one particular only, and that amendment related exclusively to State's attorneys. It took the same language, punctuation and all, so far

as State and district officers were concerned, the language relied upon here as the basis of the authority under which the Governor of North Dakota acted.

It left nothing to construction, because, in express language, the statute stated that it proposed merely to reenact the old law. That is the whole of my argument upon that point, and it is all that I intended to assert.

Mr. SWANSON. Mr. President, let me ask the Senator from Georgia this question.

Mr. HEFLIN. Right on that point——

Mr. GEORGE. I will first yield to the Senator from Alabama, because I did not desire to prevent the Senator from asking me any questions he might desire.

Mr. HEFLIN. That is the very point as to which I desire to ask the Senator the question. If the Senator thought that the Legislature of North Dakota, when they reenacted an act which was already on the statute books providing for the filling of all vacancies, thought in reenacting it they were complying with the seventeenth amendment and intended the office of United States Senator to be covered along with other offices to vacancies in which the governor should appoint, would the Senator then favor the seating of Mr. NYE?

Mr. GEORGE. I would, Mr. President. I do not think the language at all appropriate nor inclusive of United States Senators; but if there was any fixed policy in the State of North Dakota to regard a Senator as a State officer, whether he be a State officer or not, I would go so far as to say that there was at least authority for the filling of the vacancy. Then I would be troubled only by virtue of the fact that there had been no legislation responsive to the seventeenth amendment in other respects.

Mr. HEFLIN. Then I will say to the Senator from Georgia that the question resolves itself into this: As to what the Legislature of North Dakota intended.

Mr. GEORGE. I am going to get to that.

Mr. HEFLIN. The Senator from Georgia does not know what the legislature intended; there is no evidence here to the effect that they did not intend to cover the office of United States Senator. Some of us hold that they did intend to do that; and we think the people of North Dakota ought to have a Senator here instead of denying Mr. NYE his seat on a technicality.

Mr. GEORGE. Yes, Mr. President; but I am sorry the Senator emphasizes technicalities, because if Mr. NYE shall take a seat here at all, he must do so on technicalities.

Mr. SWANSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Virginia?

Mr. GEORGE. I yield.

Mr. SWANSON. I merely wish to ask the Senator a question. As I understand, the contention is made that by using the words "reenact a certain section of the code" the statute is entitled to a different construction than if it had been an entirely new and separate enactment. If instead of using the word "reenact," suppose they had passed a statute without using that word, does the Senator think it would be entitled to a different construction than should be given under the use of the words "reenact such and such a section"?

Mr. GEORGE. Does the Senator mean if the act had been passed in the same language as that of the old statute?

Mr. SWANSON. Not be entirely in the same language; there would be an amendment. To all practical intents and purposes it would be the same language, but it would be passed as an independent proposition and would not refer to the old statute. In that case would it be entitled to a different construction?

Mr. GEORGE. The Senator evidently was not paying very close attention to what I just now tried to say, and that was that it is a universal rule, to which, so far as I know, there is no exception, that when the legislature of any State reenacts, or I should say when they pass an act which carries the identical language of a prior act, with no change, it is to have the same interpretation as the old act and to be regarded as an act merely continuing the old act in force. That is true even where the language is not identical but where it is in substance the same. However, what I was arguing was that it is not necessary to resort to that general rule of construction in this case, because the Legislature of North Dakota itself has said, "We are only reenacting the old law."

Mr. SWANSON. If there had not been an amendment included in the act and the legislature had simply passed it as a separate measure, does the Senator think it would be entitled to the same construction?

Mr. GEORGE. Exactly, if it contained the same language.

Mr. SWANSON. What would have been the object in simply passing a statute exactly similar to one existing unless they had some purpose in view?

Mr. GEORGE. They amended the previous statute.

Mr. SWANSON. I say, suppose they had not put any amendment on at all, but simply reenacted word for word and letter for letter the old statute and passed it as a separate measure, would that be entitled to the same construction?

Mr. GEORGE. It would, Mr. President, but that is not the case here.

Mr. SWANSON. I am talking about the principle of construction.

Mr. GEORGE. It would according to the rules; but that is not the case here, and why discuss a case that does not arise and does not exist?

Mr. SWANSON. What I mean is this: The Senator says that all parts of the two statutes that are similar are entitled to the same construction, but suppose they had not incorporated any amendment at all, but had simply reenacted as a separate statute the statute then existing. The Senator says, although there had occurred a change in the method of choosing Senators, that the statute would be entitled to the same construction as the old statute.

Mr. GEORGE. I say that such a statute under the general rule of construction——

Mr. SWANSON. I am not now talking about the general rule of construction, but if the legislature were to do that would the Senator give the new statute the same construction if something had occurred during the time between the passage of the first act and the last act which might properly enable it to be given a different interpretation?

Mr. GEORGE. I am trying to get at the legislative intent, and, so far as that rule of construction is concerned, it will be necessary to abide by it; but it would be proper to look to any matter that would have a bearing on the legislative intent. I do not deny that proposition; but that is not the question involved here.

The act of North Dakota was amended for a specific purpose, and, rather than merely add an amendment to a particular section, the draftsman saw fit to reenact the whole act, which, as the Senator from Maryland [Mr. BRUCE] has pointed out, is the required rule in his State and in many other States, and undoubtedly is the better legislative rule.

Now, Mr. President, let me pass from that and come to the broad general question of what the legislature did mean by the act of March 15, 1917. The only provision of the act invoked here by the proponents of Mr. NYE is that the governor was given power to fill vacancies in State and district offices; that is all; no other language is invoked; no other can be found than the power given him to fill vacancies in State and district offices. What is the first and cardinal rule of construction of statutes? Is it not to find the legislative intent? Is not the language of an act given its plain, its ordinary, its usual, its general, its popular meaning, and is there anybody anywhere who would undertake to say that a United States Senator is popularly, generally, usually, and ordinarily understood to be included in the term "State officer"?

Approach the question without any technicality. The Legislature of North Dakota said that the governor of the State should have the power to fill vacancies. Omit the greater question that filling a vacancy is not the same as a temporary appointment and does not include it because it is not a necessary or component part of it—it may be a part of it, but it is not an essential part of it——

Mr. HEFLIN. Mr. President, right there will the Senator permit a brief question?

Mr. GEORGE. I yield to the Senator.

Mr. HEFLIN. The Senator is aware of the fact that the Supreme Court has declared that electors from a State at large are State officers. Does he agree with that decision?

Mr. GEORGE. I am aware of the decisions to that effect.

Mr. HEFLIN. Well, an elector comes from a State and goes to the Electoral College to represent the State in the Electoral College to select a President; a Senator comes from a State to represent his State in this body, and there are two electors from each State because there are two Senators.

Mr. GEORGE. The Senator wants me to answer whether a Senator is a State officer. I am not discussing that question as yet; I will come to it in a moment. I am saying that if you are going to strip your case of technicalities, answer then and say whether any man in America understands that the words "State officer" ordinarily, generally, and popularly include a United States Senator? They do not.

Mr. HEFLIN. My position is that he is a State officer and also a United States officer; he is both.

Mr. GEORGE. Then, Mr. President, when we pass the revenue act containing the income-tax provisions, and exempt the salaries of State officers from any income tax, the Senator, as

I understand, will assert that that exemption includes United States Senators.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. GEORGE. Yes; I yield.

Mr. COPELAND. The question the Senator from Georgia asked was, Outside of all technical considerations, outside of legal distinction, is it the popular idea that a United States Senator is a State officer? My reply is yes; that is the popular idea. I do not say that he is or that the income tax should not apply, and properly apply, to a United States Senator, but it certainly is the popular idea, in my State at least, that a United States Senator is a State officer.

Mr. GEORGE. Mr. President, in the Senator's State, if he will pardon me, by an express act of the New York Legislature he is declared to be not a State officer; and if it is the popular idea in New York, then the Senator has some woefully ignorant constituents.

Mr. COPELAND. I will say, Mr. President, that they are not confined to my State.

Mr. GEORGE. I am answering only the question the Senator suggested. In no place in America does any man understand the words "State office" to include the office of a Senator of the United States; and if they can be made to do so, Mr. President, they must be made to do so by a course of highly technical reasoning, by a course of reasoning that can not be satisfactory to the mind of any Senator who has studied the matter at great length.

Generally when one refers to a State office, he refers to an office the status of which is well known and well fixed. I do not mean that a Senator is an officer of the State at all in any technical sense; but if he is a State officer, it is not at once suggested when you are met with the language "State officer" in a section of the law of a State or of the United States.

Mr. BRUCE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Maryland?

Mr. GEORGE. I yield, Mr. President.

Mr. BRUCE. If a Federal Senator is a State officer, what right would the Federal Government have to impose an income tax on his salary at all?

Mr. GEORGE. None whatever; but by express provision in the income tax act he would be exempt. But it was not anywhere supposed by anybody who gave it any particular thought that a Senator's salary was exempt under the provisions of the income tax act; and I again assert, with all due respect to my friend the Senator from New York, that in the ordinary, popular, general acceptation, the words "State office" are not understood to include the office of a Senator.

Mr. HEFLIN. Mr. President, right there, does the Senator regard the office of Senator as an office?

The PRESIDING OFFICER. One moment please. Does the Senator from Georgia yield to the Senator from Alabama?

Mr. GEORGE. I yield, Mr. President; but I should like to say to the Senator that I am just about to discuss that feature of the matter. I am now discussing the interpretation that I think ought to be put on the language.

Mr. HEFLIN. I was asking the Senator if he thinks the office of Senator is an office.

Mr. GEORGE. Yes, Mr. President.

Mr. HEFLIN. Then what does he do with the constitutional provision which says:

> The Senate of the United States shall be composed of two Senators from each State—

And so forth? Does not that mean that each State is entitled to two officers known as United States Senators? Is not that what it means?

Mr. GEORGE. Mr. President, I do not think so. I hope the Senator will bear with me until I can conclude.

Mr. President, if this language can be made applicable to United States Senators and can be held to include United States Senators, as I have just said, you will have to resort to a highly technical process of reasoning, one exceedingly doubtful, one upon which there is in fact the preponderance of authority the other way, one on which I think no man who studies the question at length could possibly have any very serious doubt.

Mr. President, I know, of course, and all Senators know, that in a broad, general way the Senator represents his State. He represents all of the States. Each Senator here, or all of the Senators here in conjunction, represent all of the American States, and therefore each Senator represents his own particular State, because he represents them all. Because of the fact that he is elected in the State, the Federal Constitution having delegated to his State the power to elect him—it matters not whether the States were insisting on it; it matters not why they delegated it—because he is elected by the people of his State he naturally has a peculiar interest in the affairs of his own State, and we all yield to it. It is to be commended rather than condemned, but it is only in a broad, general sense that any Senator here can be said to be the representative of his State in the Senate any more than he is the representative of any other State in the Senate of the United States.

I think that so long as you have regard to the Federal character of our Government, so long as you consider only the Federal features of the General Government, a Senator may be said to be more or less of an ambassador, more or less of a person who exercises an express trust for his State; but when it comes to official functions and official actions, he is nothing but an officer of the Federal Government.

Mr. President, before I discuss the subject perhaps it might suffice for me to quote from a few eminent men on this question. Let me quote first from Mr. Hamilton:

> That a man should have the power in private life of recalling his agent is proper, because in the business in which he is engaged he has no other object but to gain the approbation of his principal.

This was the debate in the Constitutional Convention.

> Is this the case with the Senator? Is he simply the agent of the State? No. He is an agent for the Union, and he is bound to perform services necessary to the good of the whole, though his State should condemn them.

Let me quote for the sake of my Democratic friends what Mr. Jefferson had to say in 1825, a little better than 100 years ago. This is his language in his famous protest to the Virginia Legislature.

> For the administration of their Federal branch they agreed to appoint in conjunction—

Not severally—

> a distinct set of functionaries—legislative, executive, and judiciary—in the manner settled in that compact; while to each severally and of course remained its original right of appointing each for itself a separate set of functionaries—legislative, executive, and judiciary—also for administering the domestic branch of their respective governments.

Still quoting Mr. Jefferson:

> These two sets of officers, each independent of the other, constitute thus a whole government for each State separately; the powers ascribed to the one, as specifically made Federal, exercised over the whole; the residuary powers retained to the other, exercisable exclusively over its particular State, foreign herein, each to the other, as they were before the original compact.

And let me quote from another Democrat who was not overly anxious about technicalities; and I quote from no less a man than the man whose birthday was celebrated yesterday by the Democrats throughout America—President Jackson's proclamation of December 10, 1832:

> In the House of Representatives there is this difference: That the people of one State do not, as in the case of President and Vice President, all vote for the same officers. The people of all the States do not vote for all the members, each State electing only its own Representatives. But this creates no national distinction.

Now, observe the language of President Jackson:

> When chosen, they are all representatives of the United States, not Representatives of the particular State from whence they come.

Mr. President, in 1882 the distinguished Attorney General of the United States, Benjamin Harris Brewster, said:

> Unquestionably the station of Member of Congress (Senator or Representative) is a public office, taking these terms in a broad and general sense, and the incumbent thereof must be regarded as an officer of the Government in the same sense.

Permit me to read, Mr. President, from the language of that exceedingly practical Chief Justice of the United States, the late Chief Justice White, discussing, of course, an act of the Congress and not a constitutional question, and therefore determining whether or not, in view of the particular language of this act, a Representative in the Congress or a Senator in the United States Senate is a Federal officer. After having determined that question, however, with reference to the exact provisions of that act of Congress, he goes further and uses this broad and general language, which unmistakably shows what the Chief Justice thought upon this important question:

> Guided by these rules, when the relations of Members of the House of Representatives to the Government of the United States are borne in mind and the nature and character of their duties and responsi-

bilities are considered, we are clearly of the opinion that such Members are embraced by the comprehensive terms of the statute.

Thus far, purely a statutory construction.

If, however, considered from the face of the statute alone—

That is, just from the broad language alone—

the question was susceptible of obscurity or doubt, which we think is not the case—all ground for doubt would be removed by the following considerations:

And I ask Senators to note them:

(a) Because prior to and at the time of the original enactment in question the common understanding that a Member of the House of Representatives was a legislative officer of the United States was clearly expressed in the ordinary, as well as legal, dictionaries. See Webster * * *; Century Dictionary * * *; Bouvier's Law Dictionary * * *; Black's Law Dictionary * * *—

And other authorities cited by the learned Chief Justice.

(b) Because, at or before the same period, in the Senate of the United States, after considering the ruling in the Blount case—

And we may hear much of it, and it has no application here—

after considering the ruling in the Blount case, it was concluded that a Member of Congress was a civil officer of the United States within the purview of the law requiring the taking of an oath of office.

Citing his authorities.

Mr. SHIPSTEAD. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Minnesota?

Mr. GEORGE. I yield, Mr. President.

Mr. SHIPSTEAD. Was the Senator quoting the Blount case?

Mr. GEORGE. I am quoting the late Chief Justice White in commenting on the Blount case.

Mr. SHIPSTEAD. Will the Senator kindly read the comment again?

Mr. GEORGE. The language, again, is this:

(b) Because at or before the same period in the Senate of the United States, after considering the ruling in the Blount case, it was concluded that a Member of Congress was a civil officer of the United States within the purview of the law requiring the taking of an oath of office.

Citing authorities.

(c) Because also in various general statutes of the United States at the time of the enactment in question a Member of Congress was assumed to be a civil officer of the United States.

Citing authorities.

(d) Because that conclusion is the necessary result of prior decisions of this court and harmonizes with the settled conception of the position of members of State legislative bodies as expressed in many State decisions.

Citing a long list of authorities.

Mr. SHIPSTEAD. Mr. President, will the Senator yield further?

Mr. GEORGE. I yield.

Mr. SHIPSTEAD. The Senator is aware, of course, that in the Blount case the Senate itself decided that a United States Senator was not a civil officer of the United States within the meaning of the Constitution?

Mr. GEORGE. Mr. President, I do not want to be led astray in a discussion of the Blount case; but let me suggest to the Senator that there they were considering whether or not a Senator could be tried after impeachment. Senator Blount was impeached. After he was impeached he resigned from the Senate. That, of course, afforded no reason why he could not be tried by the Senate. When his trial came on in the Senate he filed a plea to the jurisdiction, and he raised the question that he was not subject to impeachment because not a civil officer of the United States under the particular provision of the Constitution. In that case the Senate did, by a vote of 14 to 11, sustain the plea to the jurisdiction, and it may be that the Senate did consider that he was not an officer of the United States. I do not wish to go into a discussion of that case at this time, but it was not necessary at all, because upon the plainest principles a Senator of the United States can not be tried after having been impeached by the House for two all-sufficient reasons: First, because the Constitution of the United States expressly provides a different method for getting rid of a Senator. It is true it does not impose civil disabilities upon him on account of expulsion, but it nevertheless deals with the question which, in part, is involved in an impeachment, and having dealt with it in another way in the Constitution, it is presumed, I think, that the Constitution did not intend to make a Senator subject to impeachment.

I think there is another reason, however. Let us suppose that the whole Senate should be guilty of treason against the United States and that all the Senators were charged by an impeachment proceeding in the House with treason. Who would try them? How could they be tried under the Constitution? They could not be tried. The Senate and the Senate alone can try an impeachment proceeding. It is only when the President is himself impeached that anybody else comes into this body, and he the Chief Justice of the United States.

It does not matter that it is said that it is not likely that all of the Senators would be guilty of treason at one and the same time. If one of them can be tried, they can all be tried, and, of course, they can not be subject to impeachment. Whatever may be said about the Blount case, it did not decide that a Senator of the United States is not a Federal officer. At most and at best it merely decides that he is not a civil officer within the meaning of the impeachment clause of the Federal Constitution; and he is not. He is not a civil officer, because he is a part of the national lawmaking body of the Federal Government. He is an integral part of the Federal legislative branch. He is more than a mere civil officer. He is a high political officer of the Government of the United States.

Mr. President, upon the broadest considerations and having no regard whatever to any technical rule, a Senator of the United States is necessarily a Federal officer and not a State officer.

Mr. WHEELER. Mr. President, the Senate, however, did decide that he was a State officer. That question was before them, and that was the thing they passed upon.

Mr. GEORGE. That question was before them, but the Senator's plea to the jurisdiction was sustained, not necessarily upon that one ground alone.

Mr. WHEELER. That was a ground that was urged?

Mr. GEORGE. That was one of the grounds.

Mr. WHEELER. In addition to that, is it not a fact that the Chief Justice in passing on the case recognized the fact that the Senate did decide that he was not a United States officer, but was a State officer?

Mr. GEORGE. Mr. Chief Justice White, in passing upon it, said that after the decision in the Blount case, in the Senate of the United States again considering the question, it considered him a civil officer. That is what the Chief Justice said.

Mr. McKELLAR. Mr. President, I wish to ask the Senator if it was not held by our Supreme Court, in the case of Senator Burton, indicted some years ago, that a Senator is not a civil officer of the Government of the United States?

Mr. GEORGE. Mr. President, I did not wish to go into that case, because it is manifest that I can not go into all of them; but it was not decided in the Burton case that a Senator of the United States was not a Federal officer. It was decided in the Burton case that a Senator of the United States was not a civil officer under the Government of the United States, and the distinction is clearly made that he does not hold his office under the Government of the United States, in the meaning of a criminal statute, and not only that but in the meaning of a statute which carried the severe penalty of making it impossible, if he were such an officer, for him again to hold office, if convicted of its violation.

Mr. President, in the construction of a criminal act, and in the construction of any act imposing a penalty so severe as this, it is the universal rule of construction that the statute will be construed strictly against the Government, liberally in favor of the individual, and, of course, a Senator of the United States, as the Supreme Court very properly held, was not a civil officer under the Government. But does that hold that he is a State officer? Does that deny the fact that he is one of the high political officers of the Federal Government; that he is an integral part of the national legislative body itself, just as the President is the Chief Executive of the National Government itself?

Mr. President, I was about to read a definition of what an officer is in order to clarify this question if I might, and I was about to read no less authority than Mr. Chief Justice Marshall, and I wish to read it and invite the attention of Senators to it. He defines an office:

An office is defined to be a public charge or employment, and he who performs the duties of the office is an officer. If employed on the part of the United States he is an officer of the United States. He who performs the duties of an office is an officer.

What duties can a Senator here perform? What powers can a Senator here excute. It should not be necessary to repeat that the General Government is a Government of expressly delegated powers precisely limited; that the General Govern-

ment has no powers not given to it by the States or the people, but that as respect the powers which the General Government has neither the States nor the people can invade or exercise those powers. The States themselves remain sovereign, free, and independent, clothed with all of the powers which they have reserved to themselves, and all of the powers which they have not prohibited to themselves, and all of the powers in addition which they have not delegated to the General Government. But no State can exercise a single power delegated by it to the General Government, and every time a State undertakes to do so it is met with the constitional inhibition, and the courts unhesitatingly set aside the State act.

If the State can exercise none of the powers which the Senate of the United States can exercise in the legislative branch of the General Government, how can it appoint an officer to do what itself can not do? It may appoint a Senator in the manner pointed out by the Constitution, solely because the Federal Constitution has conferred upon the State—whether at the insistence of the State, whether upon the demands of the State is a matter wholly outside of the question and beyond the point—the State can elect a Senator only because the Federal Constitution has given to the State that power, aye, placed upon the State the duty of electing a Senator.

It is true he is elected by and commissioned by, and when he resigns he resigns to, his State; but when he comes here to exercise his powers, under the language of Chief Justice Marshall, when he exercises the powers, he exercises powers only which his own State is forbidden to exercise save by his hands as a Member of the National Legislature.

Mr. HEFLIN. Mr. President, right in that connection, is it not fair to concede that the States demanded that they have two such officers in this body as United States Senators?

Mr. GEORGE. Not only fair, Senator, but they did.

Mr. HEFLIN. They did demand it?

Mr. GEORGE. Yes.

Mr. HEFLIN. And that when those two Senators came here they were officers of the State and of the Federal Government also?

Mr. GEORGE. Mr. President, I have tried to cover that point, but I wish again to insist that the one test of the question, to what sovereignty an officer belongs, is found at last in the determination of the question, what sovereign's powers he exercises. The test of the question whether a man is an officer is answered by a determination of the question whether or not he exercises sovereign power. He is a mere agent, he is a mere employee, when he does not exercise sovereignty. He does not get into the class of officers until he is clothed with some sovereign power. It does not make any difference how he is elected, primarily at least, it does not make any difference how long he may hold and under what authority, but he passes out of the class of mere agents, out of the class of mere employees, into the class of an officer when he becomes clothed with sovereign power.

What sovereign power of the State of Georgia do I here exercise? I am here by right of my State, I am here under the authority of my State, I am here to exercise powers in behalf of my State, but I am here to exercise those powers and those powers alone which my State gave up to the Federal Government, and which my State can not longer exercise.

As a safeguard to the interests and the rights of the States, the States did insist that they should be allowed to elect their Senators and send them to this national law-making body, mindful of the fact that they would regard their obligations to their own immediate constituents. That was the way in which the State sought to protect itself; and there would have been no occasion for the State undertaking to protect itself at all if I remained here as a State officer, subject to the State's will, to the State's dictation, subject to removal by the State, clothed only with the powers which the State could rightfully exercise.

Neither historically, nor logically, nor technically, nor on authority, nor in any other way can it be said that a Senator in the Congress of the United States is a State officer. In a broad, general sense he is a public officer of the United States, an integral part of one of the separate and independent branches of the General Government, performing and exercising and executing only the powers from which the States have forever separated themselves.

Mr. President, I would go much further than some of my friends who are favorable to the seating of Mr. NYE might imagine I would go. I would go this far without a moment's hesitation, because I would like to see the office filled and the vacancy in the office filled at the earliest possible moment. I recognize that it is the universal principle of law that the law abhors a vacancy in public office, and it should be filled at the earliest possible moment consistent, of course, with the grant of power to make an appointment to that office.

I would go further. I believe that a Senator is not a State officer. I know that he is not so historically. I know that he is not so actually. I know that he is not so on authority. I know that he is not so by any rule of logic. But I would go further, and I would say that if there was in North Dakota a settled State policy of regarding a United States Senator as a State officer, then I would try to stretch the act of 1917 to cover him. I would have no difficulty in saying that, so far as that particular person was concerned, if the State of North Dakota regarded him and considered him as a State officer, I would so regard him and so consider him, although as a matter of fact and matter of law he is not such in my judgment.

Then, Mr. President, when I reached that point in the consideration of this case I sought the election laws of North Dakota. I wished to know if in the election laws of North Dakota that good State had considered and did consider a United States Senator to be a State officer. I thought that if they did so consider him perhaps I might then be able in some way to vote on my conscience and under my oath for the seating of Mr. NYE in this body. Looking to those laws, I find in Article XIV, section 196, of the constitution of North Dakota—and I invite the attention of Senators to the language—the following:

> The governor and other State and judicial officers, except county judges, justices of the peace, and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt practices, or malfeasance or misdemeanor in office.

"State officers." Does that provision include a United States Senator? Looking to the election laws of North Dakota, is there a settled State policy to include United States Senators in the term "State officers?" It is not so used when we go to the very source of North Dakota's political life, to her constitution. When we go there we find that the State of North Dakota declared that "all State officers" in effect, or at least "other State officers," which would include Senators because they are not excepted, are subject to impeachment for drunkenness, and so forth. We know that the Legislature of North Dakota did not mean to say that a Senator in the Congress of the United States could be impeached for either one or all of the reasons set out in that constitution. It would bring the constitutional provision of North Dakota in direct conflict with the Federal Constitution, which prescribes the length of a Senator's term, which prescribes the only method by which he can be removed from this body, and which, under authority, exempt him from impeachment by any agency of the Federal Government itself. They therefore did not mean to include Senators when they referred to "State officers."

So I looked further, and I found section 669 of the compiled laws of 1913, which requires the giving of a bond "by each civil officer elected by the people or appointed by the governor, or by other authority provided by law," with certain exceptions, among which United States Senators are not stated.

Section 662—and I invite the attention of Senators to this particular language—requires that "the bonds of all State and district officers," and so forth—the identical language of the only authority under which the Governor of North Dakota can claim to have acted:

> The bonds of all State and district officers shall be given to the State; * * * of the county, township, and municipal officers, to the county.

If all State and district officers are to give bond and if, when the Legislature of North Dakota used the identical language which is relied on here, they intended to include United States Senators, certainly they intended to include them when they said they should give bond.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER (Mr. KING in the chair). Does the Senator from Georgia yield to the Senator from Nebraska?

Mr. GEORGE. I yield.

Mr. NORRIS. I want to ask the Senator if as a matter of fact the Governor of the State of North Dakota does give a bond?

Mr. GEORGE. I do not know.

Mr. NORRIS. Can the Senator conceive what would be the condition of his bond?

Mr. GEORGE. I could not.

Mr. NORRIS. If it should develop on investigation that the governor of the State does not give a bond, then I suppose they have not tried to get bonds from Members of the House of Representatives.

Mr. GEORGE. Nor from a United States Senator.

Mr. NORRIS. They would all be in the same class still, would they not? Can the Senator tell me whether members of the Legislature of North Dakota give bonds?

Mr. GEORGE. I am not contending that they are not all in the same class; that is, they are in the same class still. They are in their proper class. I am looking, as I tried to make plain, to what was the settled State policy in North Dakota when it used certain language in its election laws. I said very frankly that although if I found they had a State policy which was contrary to what I myself concluded to be a true classification of the offices which I have just discussed, that I yet would have regard for that State policy. I am now proceeding to point out a few of the acts, and this particular act is one in which they have used the identical language of the act of 1917 under which the appointment is made.

Mr. NORRIS. I understood the Senator's illustration, and I see the importance of it and am not questioning it. But if it has any value it seems to me it ought to be followed to show that the Governor and the members of the legislature and everybody in North Dakota actually is required to give a bond.

Mr. GEORGE. I am not, of course, talking about what might be even the proper construction of the act in practice. That is what the Senator has in mind.

Mr. NORRIS. The thing I have in mind to make the illustration applicable to the office of United States Senator, it seems to me, is that it would have to appear that they are excepted from the rule that is applied to these other officers; and if the others are excepted the same as Senators and as a matter of practice do not give bonds, then it seems to me that the force of the Senator's argument falls.

Mr. GEORGE. I do not understand why the Senator can not see the force of the argument, but I do not, of course, misinterpret what he has just said. What I am saying is that when we look to the act under which the governor in this case proceeded and find the words "in State and district offices," and then when we find the same words in the other election laws of the State of North Dakota, and when those other election laws can not possibly be held to apply to a United States Senator, we must assume that in the act of 1917, which is relied on here as the authority for the act of the governor, the Legislature of North Dakota did not intend to give to the governor the power to fill a temporary vacancy in the office of United States Senator.

Mr. HEFLIN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Alabama?

Mr. GEORGE. I yield.

Mr. HEFLIN. If the Senator will permit me, the act starts out by saying, "All vacancies, except members of the legislature, shall be filled," and so forth.

Mr. GEORGE. While the Senator is repeating that, that was the burden of an argument on yesterday. It provides "all vacancies in State offices"—State offices. If the Senator will read the act as a whole, he will find that language.

Mr. HEFLIN. I understand that. Our contention is that a Senator is in a sense a State officer.

Mr. GEORGE. But we differ on that.

Mr. COPELAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from New York?

Mr. GEORGE. I yield.

Mr. COPELAND. May I ask the date of those laws that the Senator is reading now?

Mr. GEORGE. The laws I am now reading were compiled or recompiled in 1913. I am going to read others, if the Senator will permit me, that have come along down during the later years, some after the act of 1917.

Mr. COPELAND. It seems to me the Senator would need to do that to upset the argument which will be used in reference to the law of 1917, because there will be many to contend that the law of 1917 was passed with full information on the part of the legislature that the United States Constitution had then been amended.

Mr. GEORGE. Oh, yes; I have no doubt of that, that there will be that contention.

I am now arguing solely on the intent of the Legislature of North Dakota, not on what is a proper construction of the several acts to which I am making reference. I am trying to find, if I may and if I can, some settled policy in the State of North Dakota to regard a Senator as a State officer. If I may be permitted now to repeat section 662, I will do so, that the bonds "of all State and district officers shall be given to the State," and so forth. Manifestly "all State and district officers" can not include a United States Senator and was not intended to include a United States Senator. Sections 663 and 674 make further provision with reference to the giving of bonds. In both cases they used the term "State offices," while section 678 provides "all State, district"—"all State." That is more comprehensive, or at least equally comprehensive with the language in the act of 1917:

> All State, district, county, and precinct officers shall qualify on or before the first Monday of January next succeeding their election, or within 10 days thereafter, and on said first Monday in January or within 10 days thereafter enter upon the discharge of the duties of their office.

Mr. President, here is a very general provision that "all State officers"—an all-embracing, all-inclusive term—"all State officers" shall qualify by a certain date by doing certain things, any one and all of which are wholly inconsistent with anything that can be required of a United States Senator by the laws of his State.

Section 679 provides that in case of noncompliance with the provisions of said section, "such office shall be deemed vacant and shall be filled by appointment as provided by law."

Mr. President, let me advert to one or two more quotations from the laws of North Dakota on this point.

Chapter 11, article 1, compiled laws of 1913 providing for the holding of primary elections in section 852 provides that at the time stated therein—

> there shall be held in lieu of party caucuses and conventions a primary election in the various voting precincts of this State for the nomination of candidates for the following offices to be voted for at the ensuing general election: namely, Members of Congress, State officers, county officers, district assessors, and the following officers on the years of their regular election, namely, judges of the supreme and district courts, members of the legislative assembly, and county commissioners, and United States Senator in the year previous to his election by the legislative assembly.

Manifestly they did not think that State officers included United States Senators or Members of Congress when they were framing this act, or else they would not have made for them specific provision.

Section 853 provides that "every candidate for United States Senator, Member of Congress, State officers, judges of the supreme and district courts" shall file their petitions with the Secretary of State in the time and manner provided in the act.

Mr. NORRIS. Mr. President, may I interrupt the Senator there?

The PRESIDING OFFICER (Mr. JONES of Washington in the chair). Does the Senator from Georgia yield to the Senator from Nebraska?

Mr. GEORGE. I yield, Mr. President.

Mr. NORRIS. I am not, of course, claiming that the Senator's argument is not forceful. I admit most frankly that it is forceful, but in the quotation he has just read where it refers to Members of Congress and State officers I presume the idea the Senator wishes to convey to the Senate is that because the statute designates Members of Congress and State officers separately therefore the State legislature did not regard Members of Congress as State officers? I admit the force of that, but the Senator must remember that every quotation he has read also refers to State officers and judges of the supreme and district courts. Is not the language something of that kind?

Mr. GEORGE. The statute includes district judges, and it enumerates other classes.

Mr. NORRIS. The fact is that it enumerates other officers, who the Senator from Georgia and I would both agree are State officers, does it not?

Mr. GEORGE. Yes.

Mr. NORRIS. If the statute does so, does not that take away the force of the argument which the Senator is making, that because Members of Congress are enumerated the legislature did not regard them as State officers?

Mr. GEORGE. No; I do not think so, because the purpose of their enumeration I think is made reasonably clear by the statute. I am reading this act not for the purpose of arriving at a proper construction of it but for the sake of trying to show, if I can, what the legislature of North Dakota intends when it uses the words "State officers." Now, let me read one or two more sections.

Mr. NORRIS. For fear I may be mistaken, will the Senator from Georgia again read the section which he was reading when I interrupted him?

Mr. GEORGE. I last read section 853, but will read it again, as follows:

Every candidate for United States Senator, Member of Congress, State officers, judges of the supreme and district courts shall file their petitions with the Secretary of State at the time and manner provided.

A very proper classification, and I think clearly indicating that—at least in the State of North Dakota—there is no settled State policy to regard a Senator as being included in the words "State officer," because they felt the necessity of specially enumerating that particular office in terms when they dealt with it. There would be no necessity of doing that if they felt assured that they were dealing with a Senator whenever they were dealing merely with State officers. It all goes to the question of intent so far as this feature of my remarks is now intended to apply. I will now read the last of the laws of that State which I desire to get into the RECORD, and that is section 863, which provides that—

Party candidates for the office of United States Senator shall be nominated in the manner herein provided for nomination of candidates for State offices.

Mr. President, is it subject to any possible reasonable contention whatever that the Legislature of North Dakota regarded the office of Senator in the Congress of the United States as a State office? If that is a settled policy of North Dakota, if North Dakota believes that, how can it be reasonably explained that when the legislature provides for the election of a Senator they state that "candidates for the office of United States Senator shall be nominated in the manner herein provided for nomination of candidates for State offices"? If already included, if already provided for by the provisions made for the nomination and election of State officers, why convict the Legislature of North Dakota of repeated and unnecessary tautology, senseless repetition of provisions of the law, all of which, if any one of which, are to be said to include United States Senator, must likewise be conceded also to apply to a United States Senator?

Mr. President, when we look to the laws of North Dakota for the fixed policy of that State we are bound to reach the conclusion that the State of North Dakota did not regard Senators as coming within the term "State officers," because every time they are dealt with specific provision is made for the congressional office or for the office of Senator as distinguished from a State office.

Mr. HEFLIN. That refers to the election of these officers, does it not?

Mr. GEORGE. It refers to the election; it refers to the nomination, if the Senator please.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Nebraska?

Mr. GEORGE. I yield.

Mr. NORRIS. I think the Senator ought to modify his statement, for at least in one of the provisions that he read they classify Senators differently from what they classify State officers, because in one instance the supreme court judges of North Dakota are also enumerated and classified.

Mr. GEORGE. Let me state it in this way, and I think the Senator will agree with me: Wherever they have dealt specifically with a Member of the House or the Senate in the Congress of the United States they have not been content to use only the words "State officers."

Mr. NORRIS. I think that is true; I agree with that.

Mr. GEORGE. I am not contending what interpretation should be placed upon the acts, but I am using them solely for the purpose of illustrating what I think is the legislative intent.

Mr. NORRIS. I understand that, and I am considering them in that way; but would it not likewise follow that at least in one instance the people of North Dakota have not regarded the members of their supreme court as State officers or that their intent would so indicate, because after they used the phrase "State officers" they went on and proceeded to specifically mention the judges?

Mr. GEORGE. The Senator means that after the general words they also described the officers by specific words?

Mr. NORRIS. Yes.

Mr. GEORGE. That is quite true; and to that extent I hope there will be no dispute between the Senator and myself as to the facts. We are trying to get at deductions from those enumerations.

Mr. President, I have unduly prolonged my discussion of this matter. There are one or two other phases of it that I should like to discuss, but I will not undertake to do so at this time. I would not have occupied so long a time, of course, but for questions which were very proper and pertinent, and I do not regret the asking of the questions at all except that they prolonged my remarks.

I wish now briefly to recapitulate what I have tried to say. The seventeenth amendment vests in the people the right to elect their Senators and vests in the people the right by an election to fill a vacancy in the office of Senator.

The seventeenth amendment makes it mandatory upon the governor that upon the happening of a vacancy he shall issue his writ of election. The amendment gives one permissive authority to the legislature of a State, and that is to enable the legislature, if it elects so to do, to empower the governor to fill the office temporarily until the people can elect as the legislature may direct.

Mr. President, I think it perfectly clear that there is a manifest distinction between a temporary appointment and a vacancy in an office. The vacancy itself extends to the whole residue of the unexpired term. The temporary appointment necessarily refers to that intervening time between the happening of the vacancy and the filling of the vacancy by the people at an election. Whether I have misconceived the law and the logic and the morals of the case or not, I insist in all seriousness that the great, primary question here is whether or not the people of North Dakota shall fill a vacancy in the office of the late Senator Ladd from that State by an election, or whether the governor shall prejudice the case if he may prejudice it, or whether the governor shall give any advantage if he may give it, without authority under the laws of the State of North Dakota to give that advantage.

I do not charge any bad faith; I would not care what the governor's motive was; I would assume that it was a perfectly honest motive; but I do insist that the legislature of that State itself must determine, in view of the ratification of the seventeenth amendment, whether it desires its governor to have the power of temporarily filling a vacancy in the office of Senator I ask the able and fair-minded Senator from Nebraska to remember that some intelligent American States have refused to invest their governors with precisely the power which is here sought to be exercised.

I insist, Mr. President, that the question is a broad one and ought not to be determined on a mere technicality. If Senators will look at section 78 of the constitution of North Dakota it can not afford authority to the governor, because it is not responsive to the seventeenth amendment; it came a quarter of a century before the ratification of that amendment. It is not an exercise of the power by the delegatee of the power, the legislature of the State, but it is the exercise of a power by the people in their sovereign capacity as constitution makers of the State of North Dakota. It does not empower the governor to fill temporarily the vacancy, but in plain language it gives him the authority to appoint for the full residue of the term, in direct conflict with the language and with the undoubted spirit and meaning and purpose of the Federal Constitution itself.

Finally, it can have no application, because he is given under that section of the constitution power only to fill a vacancy in an office where no other method has been provided by the constitution or laws, and the Constitution of the United States has at every moment of the time down to this hour provided another and a different method by the election of a Senator to fill a vacancy happening in the senatorial office.

Mr. President, when you come to the statute of March 15, 1917, you find yourself in precisely the same situation. It was enacted after the seventeenth amendment. It does constitute an action subsequent, and it gives to the governor the power to fill a vacancy.

How long may he fill the vacancy? When will he call the election? Who is to determine how long the State of North Dakota shall be represented here by a man who holds merely the appointment of the governor? Has the Legislature of North Dakota pointed out by a single piece of election machinery when the people shall be allowed to exercise their substantial right and power to fill the vacancy in Senator Ladd's office by an election?

Mr. President, when you apply the plain, common-sense rule of interpretation to the statute it can not be said, I undertake to say, and I assert that no court in the world would for one moment undertake to say that the act of 1917 gives to the Governor of North Dakota the power to make a temporary appointment until the people of that State may elect at an election to be held by them as the legislature of that State directs, because the simple fact is that the legislature of that State never has dealt with the question; and I do not care whether you say that the legislature is not required to direct as to the time of the election, as to the manner of the election, as to the mode of the election, or as to the places of election. They must direct; they must have the opportunity to act; they must exer-

cise their discretion; and they have not. They did say that the governor should have the power to fill all vacancies in State and district offices. They undoubtedly meant—and you can give to their language full and ample meaning—that he should have the right to appoint to offices ordinarily comprehended within the term "State offices."

Mr. President, it does seem to me, when we come to consider the question fairly and dispassionately, that there can be read into the act of 1917 no intent whatever to exercise the powers conferred by the seventeenth amendment, because it outruns the seventeenth amendment; it is flatly contrary to the seventeenth amendment, in that if it applies to Senators at all it gives the governor the power to fill the entire vacancy, in plain and clear violation of the seventeenth amendment; and you will never attribute to a legislature a purpose or an intent to violate the very power which it is asserted the legislature is undertaking to exercise.

Mr. President, I will content myself with these remarks, without dealing, on account of the lateness of the hour, with one additional phase of the matter that I wished to discuss.

Mr. HEFLIN obtained the floor.

Mr. FRAZIER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from North Dakota suggests the absence of a quorum. The Secretary will call the roll.

The roll was called, and the following Senators answered to their names:

Bayard	Fess	Lenroot	Schall
Blease	Fletcher	McKellar	Sheppard
Bratton	Frazier	McKinley	Shipstead
Brookhart	George	McLean	Shortridge
Broussard	Gerry	McMaster	Smith
Bruce	Gillett	Mayfield	Smoot
Butler	Goff	Means	Stanfield
Cameron	Gooding	Neely	Swanson
Capper	Hale	Norris	Trammell
Caraway	Harris	Oddie	Tyson
Copeland	Harrison	Overman	Underwood
Couzens	Heflin	Pepper	Wadsworth
Curtis	Howell	Pine	Walsh
Dale	Johnson	Pittman	Warren
Deneen	Jones, N. Mex.	Reed, Mo.	Watson
Dill	Jones, Wash.	Reed, Pa.	Wheeler
Edge	Kendrick	Robinson, Ark.	Williams
Fernald	King	Robinson, Ind.	Willis
Ferris	La Follette	Sackett	

The PRESIDING OFFICER. Seventy-five Senators have answered to their names. A quorum is present.

Mr. HEFLIN. Mr. President, it is not my purpose to speak very long.

Two very able speeches have been made in favor of carrying out the constitutional provision that each State shall have two Senators in this body. The speech by the able Senator from Mississippi [Mr. STEPHENS] presenting the minority report of the Committee on Privileges and Elections in favor of seating Mr. NYE is, in my judgment, an unanswerable argument. He presented his cause with great force and effect. The able and eloquent speech of the brilliant Senator from West Virginia [Mr. NEELY] has not been answered and can not be successfully answered. When he finished his remarkable address on this subject I could not see what ground the opposition had left to stand upon.

Some of the questions that arise, in my mind, in connection with this case are:

Is North Dakota one of the sovereign States of this Union, and has it a State government recognized by the Government of the United States?

Has the State of North Dakota at this time a duly elected governor?

Is that State, along with other States of the Union, entitled under the Constitution to two Senators in this body?

Has that State now two Senators serving in this body? If not, why not?

Has a vacancy occurred in the office of one of the United States Senators from the State of North Dakota?

Has the State of North Dakota since the adoption of the seventeenth amendment by legislative enactment provided for filling vacancies in this and all other offices in that State? If so, what language was used in the North Dakota statute upon this subject—I mean the statute enacted after the adoption of the seventeenth amendment?

In the first place, the constitution, the organic law of the State of North Dakota, provides that—

> When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

The act of the legislature in force prior to the adoption of the seventeenth amendment to the Constitution provided that the governor should fill vacancies in all offices (except members of the State legislature) with which that State had to do. After the adoption of the seventeenth amendment, the State of Norh Dakota, attempting to comply with the requirements of that amendment, reenacted a statute upon the subject which was already upon the statute books, declaring again its willingness and purpose to have the governor of the State to fill "all offices" except those specifically designated. It did not withdraw from the governor the power to fill such offices, but declared anew that he should do so and the law of the State of North Dakota now reads:

> All vacancies except in the office of a member of the legislative assembly shall be filled by appointment * * * by the governor.

Mr. President, if Senators could understand what the words "all vacancies" mean, we would have no difficulty in determining this matter. Is the office of United States Senator really an office? If so, what kind of an office is it? Is it not in a very important sense a State office? Surely Senators do not expect the people back home to accept the strange and dangerous doctrine that a United States Senator is purely and wholly, singly and solely a United States officer? Every State in the Union has, under the Constitution, two offices to fill, known as United States Senators. The Constitution of the United States plainly provides that—

> The Senate of the United States shall be composed of two Senators from each State.

That language simply means that each State has set apart for its use and benefit two officers to be selected by it to represent it in the Senate of the United States. What does the State do in regard to these officers? It claims and asserts the right free from Federal interference to elect two of its own citizens, who reside within the confines of the State, to represent it here in this law-making body composed of two Senators from each of the 48 States of this Union.

Each State by its constituted authority commissions two of its citizens to come here primarily as representatives of that State. But that is not all. While they are sent here to look after the interests of the people of the State, they are also sent here to join with other Senators in looking after the interest and welfare of the Union of all the States. Senators, I can not see how anyone can escape the common-sense view and righteousness of that conclusion. How can any Senator seriously contend that an officer given to the State by the Constitution and elected by the State to this body is in no sense a State officer?

To show that every Senator here regards the office of Senator as a State office in a sense, whenever an appointment made by the President is sent to the Senate for confirmation the various committees will send notice to the Senator of the State from which the appointee comes and give him a chance to be heard as a representative of the State in question. That has always been done. Take the matter of post offices in Alabama. I am a member of the Committee on Post Offices and Post Roads, and every appointment made by the President in my State is referred to me, and I am given the opportunity to be heard in the matter before any other Senator is consulted on the subject. Yet Senators stand here and contend for hours that the office of Senator is in no sense a State office.

The eloquent junior Senator from West Virginia [Mr. GOFF] spoke nearly four hours, and during his remarkable speech—and he made a good speech from his standpoint, but his standpoint was bad—he said, among other things, that a Senator could absolutely ignore his State in the stand he took in this body, because, I suppose, that he was such a broad, far, and wide-reaching United States officer. I have been in politics some time, and I have observed that in the cases of all Senators who have ignored their States the places which once knew them here now know them no more forever. [Laughter.] I fear that Senators are going to find that that fate will follow them in this case.

The stand was taken by my good and genial friend, the able Senator from Indiana [Senator WATSON], that the Newberry case did not affect anybody; that nobody lost a vote by it. The Senator ought to refresh his recollection, because it is bad in this particular respect. Mr. Newberry came from the State of Michigan. An able and clever gentleman here, Senator Townsend, was a candidate for reelection. He supported Mr. Newberry, and he was defeated by the able Senator who sits on my left [Mr. FERRIS], and no more patriotic man and no abler man has been here since I have been in the Senate than the

distinguished junior Senator from Michigan, a Democrat, who succeeded Mr. Townsend. And among other things the Newberry case was a prominent issue in that election.

Mr. Poindexter, from the State of Washington, cast his lot on the side of Mr. Newberry, and he, too, is gone. I made a speech in the Newberry case, and looking at the Senator from Washington and some others over there, I said, "I am looking in the faces of Senators who are now voting to give Newberry a seat and are voting to give up their own seats." What I said came true. Yes; it affected the political situation in various localities.

The Newberry case has been discussed ably by the Senator from West Virginia [Mr. NEELY], and he told some pertinent truths about it. No doubt his speech will be read in the campaign this year where United States Senators are candidates for reelection. There was objection to Newberry for various reasons. It was shown that he corrupted many voters of his State; that he made barter of the ballot; that he used money corruptly and purchased a seat in this body. That was the situation in that case, and I fought to keep him out, because I did not think that any man should have a seat in this body who bought it like he would buy a sheep in the market place. I believe that men ought to be selected to come to this body because of their merit, their integrity, their patriotism, and I do not think money should ever be the dominating thing in the politics of the United States.

What is the situation here? Is there any corruption back of the appointment of this brilliant young newspaper man from the State of North Dakota? No. Has it been charged that there was a conspiracy of any kind back of his appointment? No. Did the governor in appointing him attempt to put something over on the people of that State? Nobody has dared to charge such a thing. Is Mr. NYE fit to represent his State in this body? No objection has been made on that ground. The highest authority of the State declares that he is, and has given sanction to that declaration by his signature appointing him to represent that State for six months in this body. Who from North Dakota speaks on that subject here? The able Senator from that State, Mr. FRAZIER, once governor of North Dakota, is here asking us to seat Mr. NYE and not to deny his State its constitutional right to have two Senators to represent it in the Senate of the United States.

The governor designated this man and the Senator from that State, the only one here who can speak for North Dakota, who still mourns for his friend and able colleague dead, begs the Senate to seat this man and permit his State to have, as the other States have, two representatives in this body as provided in the Constitution of the United States.

What have we witnessed here during this remarkable debate? We have seen hours consumed by highly trained and brilliant technical lawyers, who have gone off and filled and confused their minds with technicalities and precedents old and hoary. "What are precedents?" said one great constitutional lawyer. "Most of them are simply errors grown old."

What did Paul say about technicalities? Paul said, "The letter killeth"—do you get that, Senators?—"The letter killeth, but the spirit maketh alive."

What should we, as fair-minded and sensible men, do in this particular case? Should we not apply our common sense and exercise our judgment as to what is right and best to be done in the case now before us? What course should I take—one that will lead me to a vote to allow a sovereign State to have its full representation in this body, as provided in the Constitution of the United States, or one that leads me to decide in favor of fine-spun technicalities which will deprive a sovereign State of its full representation in this body?

If a doubt exists at all in the matter, as to whether this North Dakota statute is written as some of our highly technical lawyers would have it written, when the man himself is fit, is a clean man, and an able man, picked out and sent here by the governor of his State, and the Senator from that State says that they felt that they had complied with the requirements of the seventeenth amendment and had a right to fill the vacancy, and did so in good faith, I feel that it is my duty to give the benefit of the doubt to the living, breathing State of North Dakota rather than to a mass of dusty and musty old and lifeless precedents and technicalities.

Senators, there is no doubt in my mind that when North Dakota, by an act of the legislature, after the seventeenth amendment had been adopted, gave the governor authority to fill all vacancies occurring in the State except members of the legislature, the State intended that the governor should make temporary appointments of United States Senators for the State of North Dakota. Nobody has shown here that they did not intend to do that.

The act of the legislature itself shows that the governor had the right and power to appoint Mr. NYE. Not only that, but the State of North Dakota was so thoroughly imbued with the idea that a United States Senator was a State officer that its legislature passed an act giving the people of the State the right to recall their United States Senators and take them out of the United States Senate if in their judgment they had proven themselves indifferent to the interests of the people of the State and unworthy to represent them here. Is not that fact of itself sufficient to prove to those who oppose the seating of Mr. NYE that the people of North Dakota particularly regarded the office of United States Senator, as many of us here do, as being in a very high and important sense a State office? Under all the circumstances in this case I had rather cast 10 votes to permit the State of North Dakota to have its full constitutional representation here than by any speech or vote of mine deny it the right to such representation in this body.

Mr. HEFLIN. Mr. President, I must pass on this particular case, regardless of what precedents have been set by certain courts in other cases of the long ago. The Constitution provides that each Senator shall be the judge as to who shall sit in this body with him. The Constitution provides that the Senate, and the Senate alone, shall determine who shall constitute its membership. Therefore the responsibility rests upon me to decide for myself whether or not Mr. NYE is entitled to a seat in this body. I am firmly of the opinion that a United States Senator is, in a high and important sense, a State officer. The State elects him and commissions him to come here to be the State's representative in this body, and when he resigns he must do so to the governor of the State. I suggest to all those Senators who hold that a United States Senator is purely a United States officer that when they get ready to run for the Senate again that they announce themselves as candidates not in and to the people of the various States but to the people of the "whole United States." Then, if one of you should get elected in that way, when you come back I want to point you out as an American curiosity and something new under the sun. [Laughter.]

Mr. WILLIAMS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Missouri?

Mr. HEFLIN. I do.

Mr. WILLIAMS. Would it not be competent for us so to amend the Constitution of the United States as to provide that Members of the United States Senate may be elected at large by the people of the United States, but nominated from their respective States?

Mr. HEFLIN. It might be arranged, but I do not think the people would adopt such an amendment.

Mr. WILLIAMS. I understand; but I say, would it not be competent for the people of the United States to make such an amendment to the Constitution?

Mr. HEFLIN. I repeat they might do that if States enough should ever get crazy enough to do it.

Mr. WILLIAMS. If they did that, then would not the legal status of a United States Senator be identical with what it is under the present Constitution?

Mr. HEFLIN. It might be, but such a thing will never be. That is the answer to that proposition.

Mr. President, I want to follow that up just a little because it is interesting to me.

Mr. KING. Mr. President, will the Senator yield?

Mr. HEFLIN. I yield.

Mr. KING. As I understand the able Senator from Missouri, his position is that you can not differentiate the present situation from the situation which might eventuate if the people lost their sense, as indicated by the Senator from Alabama, and the Constitution was amended so that Senators should be elected by all the people of the United States, but two, at least, must be elected from every State. As I understand the Senator from Missouri, he sees no difference between an amendment of that character and the present amendment, which provides that Senators shall be elected by the people of the State, and that they must be residents of the State. I sincerely hope I misunderstood the Senator, because I can not believe he would take that position.

Mr. WILLIAMS. The Senator did not misunderstand me, but I think he did not follow me. So much has been said in making tests and in discussing functions, rather than in discussing the character of the office itself, that I wondered if the Constitution should be amended in the way I have suggested, whether the man so elected would not be truly an officer under the Constitution of the United States rather than a State officer.

Mr. HEFLIN. Oh, Mr. President, that situation will never occur. There is not a State in the Union that would vote for such an amendment as the Senator has suggested.

Mr. WILLIAMS. I quite concede that.

Mr. HEFLIN. The Senator was just supposing a case, so I will suppose a case. Suppose when the Senator gets ready to run for reelection; if the very clever Senator from Missouri should decide to run again, let me ask him whether he is going to announce his candidacy to fill an office belonging to the people of Missouri or whether he is going to announce his candidacy before the whole body of the American people for what he calls a Federal office—called in the Constitution a United States Senator, distinguishing it from a senator in the State legislature?

Mr. WILLIAMS. In the event the amendment were adopted my candidacy of course must be announced to the people of the United States.

Mr. HEFLIN. But in the event it is not adopted?

Mr. WILLIAMS. My only regret in that respect would be that I am not so well known throughout the United States as is the distinguished Senator from Alabama. [Laughter.]

Mr. HEFLIN. Oh, I thank the Senator.

The PRESIDING OFFICER. The Senator from Alabama will suspend a moment. Under a rule of the Senate demonstrations of approval or disapproval are not permitted from occupants of the gallery. The Chair desires to call the attention of the occupants of the galleries to the rule.

Mr. HEFLIN. Mr. President, some amusing things have transpired here during this debate, and this is the first opportunity the outside representatives of the people have had to express their approval of our course. I am sure that the occupants of the galleries are proud to acknowledge that they are still citizens of the various States.

The Senator from Missouri has said that I am better known in the country than he is. I want to tell him that I will continue to hold that my State has two Senators in this body, and I shall ask them, and nobody else, to send me back here as one of her Senators.

That is going to be my position. I think the position that a Senator is in no sense a State officer is utterly ridiculous.

We are told here that a Senator may know no State; that he may forget his own State; and that he is in no sense a State officer. I deny that proposition. If a Senator is not a State officer of his State in this body, then the State is without representation in this body. Can anyone get around that argument? No; but I am surprised that some Senators forget their States and forget the doctrine of State rights, the sovereign power of the States, when they get into the fascinating atmosphere of Washington. There is something powerful in the magic wand that is wielded about this Capitol. I have seen it have a very soothing effect on some Senators.

I am reminded of Æsop's fable where the kings of old fed their captives on lotus fruit, which destroyed their memory, so that they would forget their homes and the ties that bound them to home and loved ones left behind. I have seen Senators come here, and I do not know what sort of fruit it is they eat, but they soon became big, broad, farseeing, and wide-reaching officials of these United States. Let those back home in the States settle that question this year. This year and in 1928 these Senators are going to have to answer for their position on this matter. Whenever they tell their people who elect them here to represent them that they are not their officer, that they are here looking after other people, they will select somebody who has a different viewpoint. You can put that in your pipe and smoke it.

This statute says "all vacancies"; where? In the United States? No. In North Dakota. Vacancies where? "Vacancies arising in offices that belong to the State of North Dakota." Is a United States Senator an officer of North Dakota? The people there think he is. They elect him. They commission him. They require him to come back there to resign. They have passed a law to recall him when he forgets them here and does contrary to what they think is for the highest and best interests of the State, and yet Senators stand here and tell me that he is not a State officer. The Senator from West Virginia [Mr. GOFF] argued that proposition, I recall.

The able Senator from Georgia [Mr. GEORGE] says that if he were convinced that the people of North Dakota regarded the office of United States Senator as a State office and thought that they had provided for the filling of a vacancy in a State office he would change his position and vote for the seating of Mr. NYE. I want the Senator from Georgia to join us in voting to seat Mr. NYE. I cite him to a statute here that I hold in my hand which clearly indicates that North Dakota regards it as a State office and has authorized the people of that State to recall him after he has been elected here. Could they do that with an officer who was purely a United States officer? No. Then they certainly thought he was a State officer. They provided for recalling him and no court has to declare that that act is unconstitutional. So North Dakota has shown very clearly that she regards a United States Senator as a State officer.

If there is any doubt about this matter why not give such a doubt to the State of North Dakota? I would much rather give the benefit of the doubt to that State. I would rather reason about it in this fashion: Is NYE a good man? Yes. Able? Yes. Was he designated by the governor free from any conspiracy? Yes. Does he stand well at home? Oh, yes. Is his colleague [Mr. FRAZIER] for him? Does he vouch for him and say he wants him seated, and does he feel that the law has been complied with and that he ought to be seated? Yes. Senators, that, under the circumstances, is enough for me.

On the other hand, suppose I do not vote for him. He was appointed for about six months or a little over to fill a part of the unexpired term of the late Senator Ladd, a great and good man from the State of North Dakota. I would reason about it in this way: If I do not vote to seat him, if I reject him on the technicalities urged by technical lawyers, I here deny the constituted authority of North Dakota the right to appoint a man to this body when I have acknowledged the right in the Governors of Massachusetts and Indiana and Missouri to name men here to fill unexpired terms. I would reason further in this way: If I vote to deny him a seat in this body, I deny his State representation in this body, provided for by the Constitution. I leave North Dakota with but one Senator to serve until the election next June, when I had it in my power to vote to seat the man who will in all probability be elected in June to fill out the remainder of the term. I have denied that State representation here during that time—for what reason? Nothing except that some technical lawyers said they did not believe that North Dakota intended to comply with the seventeenth amendment when it passed an act authorizing the governor to fill all vacancies occurring in North Dakota.

What do Senators think of that? Would these highly technical lawyers, these gentlemen so learned in technicalities, deny to the young State of North Dakota the right to have a representative in this body because they did not use such phraseology as some of the older States used, with their long and well-trained lawyers? Would they require the same phraseology and legal knowledge to be displayed by those in the new Territory who wrote that statute?

Senators, what ought we to do in this matter? We ought to try to get at the intention of the legislature at the time it passed this act. Did they think they were providing for this situation? Yes. What makes me say that? Because they reenacted that statute after the seventeenth amendment had been adopted. Did that look like they were trying to comply with it? Yes. Can anybody say that they were not? No; not a living soul. What do they say on the subject? They say, "We do not believe they were trying to do that." If that situation exists, then there is room for doubt as to what they intended to do. A Senator to represent North Dakota is here appointed by the governor. I hold that the governor has authority under the statute, and I would rather vote to give his appointee a seat and let the people of North Dakota state by their ballots in June whether or not my judgment was right and just and fair and my opinion in the matter proper, or whether I should go off in the other direction and hide myself in a mass of technicalities and in doing so deny the sovereign State of North Dakota representation in this body when I had the right by my vote to grant that representation. Mr. President, the Governor of North Dakota has already called an election for June this year.

How can Senators justify their attitude toward Mr. NYE when they remained silent as the tomb when the Senator from Massachusetts [Mr. BUTLER] came here, appointed by the Governor of Massachusetts, for nearly two years? Nobody objected to him. The Senator from Montana [Mr. WALSH], a good lawyer, doubts whether the appointment of Mr. BUTLER complies with the spirit of the seventeenth amendment.

Would it not be wise for us to look into that appointment? Suppose somebody should offer a resolution declaring the seat of the Senator from Massachusetts vacant because he is not constitutionally a Member of this body? What do you think about that, Senators?

Mr. FRAZIER. Mr. President——

The VICE PRESIDENT. Does the Senator from Alabama yield to the Senator from North Dakota?

Mr. HEFLIN. I do.

Mr. FRAZIER. With regard to the provisions of other States I want to read from the brief by the Senator from West

Virginia [Mr. GOFF] in this case before the Committee on Privileges and Elections. He cites the law of the State of Missouri for appointment, which provides:

> Whenever a vacancy in the office of Senator of the United States of this State exists the governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until his successor shall have been duly elected and qualified according to law. (Laws of 1915, p. 280.)

That does not even say that the appointee shall hold until the next regular election.

Mr. HEFLIN. No. The Senator from North Dakota has called attention to a very important point. Now, Mr. President, there is another point involved in this matter. The Governor of North Dakota sits at the head of a State that is practically bankrupt. The farmers there are hard pressed; they are in distress; and God knows if there is a State in the Union that ought to have two Senators here doing all in their power to relieve its down-trodden and oppressed people it is the State of North Dakota under Republican rule.

Mr. President, the Governor of North Dakota when asked "Why did you not make this appointment earlier?" replied, "Because I wanted to wait until just before Congress met." He gave this man the shortest term that he could. Does not that look like he is a pretty fair and clean sort of governor? He did not appoint him away back on the 1st of July, but he waited and appointed him just before Congress met. For what? In order that the State might have two Senators here, as the Constitution provides they shall have.

What else moved the Governor of North Dakota in the matter? He said:

> If I call a special election now, it will cost the State $200,000. Many of the farmers of the State are not now able to pay their taxes; and why should I burden them further in the present situation? I have it in my power to relieve them of this additional burden, and I will do it.

He then announced he was going to make this appointment.

Then what? The able Senator from New Hampshire [Mr. MOSES] writes an opinion in the matter and sends it to the Governor of North Dakota when he is a juror in the case. He prejudged it. He writes to the Governor of North Dakota and tells him not to make the appointment, and that if he does he will not vote to seat his appointee here.

Senators, did you ever hear of such a snap-judgment proceeding as that?

Who asked the Senator from New Hampshire to render such an opinion? Senators, there are some curious doings in connection with this Nye case.

Senator MOSES, writing in advance what he would do, reminds me of the story which Bob Taylor used to tell. He said the animals had a convention, and when they assembled some one asked what method for voting should be employed? The coon arose and said that he favored voting by raising of the tail. The 'possum immediately objected and stated that the reason the coon wanted to vote that way was that he had a pretty ring-streaked and striped tail and he wanted to show it to the convention. The 'possum did not have such a beautiful tail and he objected to that method of voting, and in opposing it he said: "Besides that, Mr. President, the billy goat has done voted." [Laughter.] And the Senator from New Hampshire has already voted on the Nye case.

Mr. President, the Senator from New Hampshire is chairman of the Republican senatorial campaign committee. I wonder if there is any politics in this fight against Mr. NYE?

Senators, it would not make any difference with me whether a man was a Democrat, a Republican, or a Progressive if I think he is entitled to a seat here—if his people have sent him here, if he is faithful to the flag and is loyal to his country. That is the test. It is not my business to keep North Dakota politically in line with the Democratic Party or the Republican Party or to punish its people because they leave my party or the Republican Party. We ought to give North Dakota a fair deal in this matter. The people of that State whose backs are already bowed with the burdens of the day ought to have two Senators to speak for them here and to help work out the problems that so vitally affect them. Shall I vote to give them those two Senators, or shall I follow technical lawyers and deny them the representation which the Constitution has vouchsafed unto them?

The Senator from Georgia [Mr. GEORGE] confuses this case with one from Alabama. I happen personally to know about that case. I was a Member of the House of Representatives at the time, and I came to the Senate side and talked to my good and lamented friend, the able and eloquent Senator from Kentucky at that time, Senator Ollie M. James, and I urged him to vote to seat Mr. Glass. Mr. Glass was not my political friend. I had frequently had controversies with his newspaper, the Montgomery Advertiser, but that did not count anything with me in that matter. I said "He has been appointed by the constituted authority of my State; I think my State ought to be represented and that the vacancy should be filled until we can elect a Senator, and I want him seated." I took that position.

The Senator from Arkansas [Mr. ROBINSON], one of the ablest lawyers in this body, a man of fine judicial and analytical mind, a man of great legal ability, and one of the very best constitutional lawyers in this body, as is the able Senator from Missouri [Mr. REED]—everybody will concede that there is no better lawyer in this body than he—both of them contend that Mr. NYE has got a right to be seated in this body. Whom am I going to follow? Am I going to follow two able lawyers who stand head and shoulders above many of us lawyers who stand on the side of a State and on the side of the constitutional provision of the United States, or am I going to lean on this pile of dusty old books brought out by highly technical lawyers and vote with them in order that they may compliment me and say that I am a fine lawyer? [Laughter.] I have seen a lot of gentlemen do that in my day. Of course, I would not insinuate that anything like that could happen in the Senate, but I have seen men swell up and walk up and tell one who had concluded a speech, "Yes; I listened to you, and I think your contention is correct; I have followed you very carefully"; and then the one who had spoken pats him on the shoulder and says, "Yes; I always knew you had a fine mind, but you are really a smarter man than I thought you were." [Laughter.]

The Alabama case is not at all parallel to this. In Alabama the legislature had enacted the statute long before the seventeenth amendment had been adopted and had never reenacted it or said anything on the subject. We were relying on the old act and nothing of this seventeenth amendment was in contemplation when it was passed. But in the NYE case we have an instance where the legislature did act after the seventeenth amendment and used the language "the governor shall fill all vacancies." Where? Occurring in North Dakota. What kind of vacancies? "All vacancies." Did the law say "all vacancies except in the office of United States Senator"? No. It included that office as well. I challenge the Senators who have spoken and others who shall speak on the other side of this question to point me to the place where the statute says "except United States Senators."

In the absence of such a provision, the argument is on our side; the burden is on them to show that the State deliberately refused to confer that power on the governor. Has anybody done it? No. Has anybody shown that when this question was up the State authorities and legislators said, "We do not want to confer upon the governor that power?" No. Then, how are we to judge the situation? By the State law upon the subject and by the action of the governor in the matter. By the way, I want to ask the Senator from North Dakota if it is not a fact that a United States district attorney in North Dakota took a contrary position to that of the Senator from New Hampshire [Mr. MOSES] on the Nye appointment?

Mr. FRAZIER. He did.

Mr. HEFLIN. The Senator from North Dakota says that is the fact. He, a United States district attorney appointed by a Republican President and confirmed by a Republican Senate, said, "Mr. MOSES is wrong." Mr. President, would you blame the governor for pursuing the course which he did? The Senator from New Hampshire volunteered his advice and the district attorney volunteered his. One was here in Washington, the other was a citizen of and was in the State of North Dakota. Is that correct?

Mr. FRAZIER. Yes.

Mr. HEFLIN. The Senator says it is. Now, where are the technical lawyers going to stand? What have they got to stand on?

We are now sitting here as a jury, and we are also the judges to try this case. What is going to determine our course—technicalities? "Is a United States Senatorship an office?" "Yes." "If it becomes vacant it is vacant?" "Yes." "Then, if it is an office it is covered by the word 'all'."

Let me say a little more about the Alabama case, to which reference has been made many times during this debate. The Senator from Arizona [Mr. ASHURST] will bear me out in something I am now going to say. That case was not determined purely upon the legal points in the matter. A man for whom I held the highest esteem—in fact I always loved him—Mr. Bryan, was Secretary of State. He was a bitter enemy of Mr. Glass, of my State. Mr. Glass was his bitter enemy,

and Mr. Bryan fought the seating of Mr. Glass. Mr. Glass had about enough votes to seat him at one time, and Mr. Bryan and Mr. John W. Kern, Senator from Indiana, begged Senator Shively to change his position, and that is how Mr. Glass came to lose on that particular vote. The Senator from Arkansas [Mr. ROBINSON] introduced a resolution declaring Mr. Glass entitled to his seat, and upon that vote the vote stood, I believe, 32 to 31 against seating him. He lost by one vote. Mr. Bryan's influence did the work. Mr. Glass never was seated.

Senators, I am showing you how dangerous it is to cite precedents when you do not know how they were made and what the moving power back of them was.

What is the moving power back of this? I do not know. I hope the conclusion or impression I have in my mind is wrong.

Mr. FRAZIER. Mr. President——

The VICE PRESIDENT. Does the Senator from Alabama yield to the Senator from North Dakota?

Mr. HEFLIN. I do.

Mr. FRAZIER. I hold in my hand a newspaper article purporting to be the opinion of the senior Senator from New Hampshire [Mr. MOSES] in regard to this case. He refers in his opinion to the Glass case in Alabama, and says that at that time the appointment was made by a Democratic governor, that there was a Democratic President, that the Senate of the United States was Democratic, and therefore there was no politics in that case, because Mr. Glass was not allowed to be seated under those conditions; and he leads up to the conclusion that, on the other hand, should an appointment be made from North Dakota, there would be no politics in this case either, for the same reasons, I presume. I am a little surprised to hear the Senator from Alabama say that there was some politics even at the time of the Glass case.

Mr. HEFLIN. Oh, yes. There was politics in the Glass case.

I want to state that I understand that out there in North Dakota not the regularly constituted executive committee selected by the people, but another committee, a side show arrangement, met together under the leadership of some Member of the House, a Republican, and passed a resolution declaring that the governor had no right to appoint in this case; and then the second section of that resolution read something like this:

> If the governor does appoint and the appointee comes to Washington, I appeal to the Republican Senators to have nothing to do with him, not to recognize him in any sense.

Is that right, in substance? The Senator from North Dakota says it is. Where are these technical lawyers?

Mr. President, does not that look as though there was some motive back of the opposition to NYE. Here we have the chairman of the Republican Senate campaign committee writing out to North Dakota and trying to forestall the appointment of a Senator by calling on the governor not to do it, and we have a little newly hatched-out side show Republican committee in North Dakota meeting and passing a resolution denying that the governor had this authority. What difference does it make with me what committee may deny it, if I am able to read the North Dakota statute. Technical lawyers may be following the other course; but they passed that resolution saying "He ought not to be appointed, but if he is, do not recognize him. Make him an outcast. It will help us to elect a Republican.

Senators, the right of a State to have two Senators in this body is at stake and politics ought not to have any place in its consideration. These gentlemen who go off after their fine-spun technicalities are taking a position that simply means centralization gone mad. Where is your State sovereignty? Has the State two offices under the Constitution? Yes. I hold that it has. They say you have not. The two men you thought were sitting here representing the State have been declared by technical lawyers not to be your representatives. They are said to be United States officers, and in no sense State officers. Then the State has no representation here. Where is the history of original idea that each State in the Constitutional Convention demanded, and properly, two United States Senators?

I recall the history of the Constitution. They had a lot of trouble about agreeing what they would do about certain things. The little State of Delaware—so ably represented here in part by my good friend TOM BAYARD, who comes from a long line of illustrious statesmen—that State and other small States said: "What is going to become of us?" They had trouble about making the proper apportionment of representatives in Congress. They fixed it finally according to population in the House, and agreed that each State—a separate entity, a sovereign concern—should have two officers to represent it in the Senate of the United States. That is the situation; and now Senators back off and hide behind technicalities, and say they did not mean that!

Senators, are you quarreling with the governor because he did not call a special election? Did you raise that complaint when the Senator from Massachusetts [Mr. BUTLER] came here? Did you make that point when the Senator from Missouri [Mr. WILLIAMS] came here? Did you make that objection when the Senator from Indiana [Mr. ROBINSON] came here? They are all Republicans, appointed by Republican governors. If you did not raise the point against them, with longer terms, why do you raise it against NYE, with six months and a little more, a very much shorter term?

Senators, the people in this country have a heap of common sense, and they are going to read this RECORD, too; and when one of you get out in your campaign running for reelection some fellow is going to rise in the audience and say:

"Will the Senator permit a question?"

"Yes, sir."

"Were you in the Senate when the Nye case was up?"

"Yes, sir."

"Was not North Dakota denied representation by the position you took?"

"Well, in a way, but I should like to explain."

"No; wait a minute. Did you not have the right to vote to seat Mr. NYE?"

"Yes.

"Did you vote to seat him, or did you vote to deny him a seat?

"I voted to deny him a seat.

"Did you hear various Senators read this provision of the statute saying that the governor had a right to fill all vacancies in North Dakota?

"Yes, sir.

"Did they read the constitutional provision of that sovereign State that he should fill vacancies arising from any cause—all vacancies?

"Yes, sir.

"You knew the special election to elect a Senator had been called in North Dakota for June, did you not?

"Yes, sir.

"And that by your vote that State was to be deprived of the services of one of its Senators until June?

"Yes, sir.

"And you raised no objection to the seating of Mr. BUTLER, Mr. WILLIAMS, and Mr. ROBINSON, who were appointed for longer terms?

"No, sir.

"It was shown that no election was called in the case of either one of them, was it not?

"Yes, sir.

"You voted to seat all three of them?

"Yes, sir.

"But you voted to deny Mr. NYE his seat and in doing so deprived North Dakota of her constitutional right to have two Senators to look after her interests in the Senate?

"I did.

"Then the audience will bid you farewell."

Mr. President, that is going to happen to some Senators. Some of them do not think so, because the lotus fruit that is being eaten here has a strange effect on the memory of some Senators.

Senators, as I said a moment ago, no harm can come from seating this man, but great harm can come from denying a sovereign State representation in this body.

One Senator, the able Senator from California [Mr. SHORTRIDGE], said the question here was purely an intellectual one. I wonder just what he means by that. Does he mean by that that these highly technical lawyers are the intelligent gentlemen here and that those of us who lean to the State and the oppressed people of the State of North Dakota and who want the State to have representation in this body, where under the Constitution it has a right to have it, are not intellectual? That is one of the points made. Another is that a Senator is not a State officer but is purely a United States officer; and another one is that he can defy the people at home if he wants to; that he is not at all beholden to them; that he is in no sense a State officer.

And they also said that the North Dakota Legislature had never provided for filling this vacancy. We ask them:

"How do you know?"

"Well, I just do not think so."

"How did the statute read?"

"It said that the governor should fill all vacancies in offices in North Dakota."

"Were they of the opinion that that phrase covered all the offices?"

"Yes; we think so."

"Do any of you know that they did not?"

"No."

Mr. President, that is the situation here. We contend that they did think they were providing for these vacancies according to the seventeenth amendment when they reenacted a statute which was already on the statute books. What sense would there have been in bringing forward and reenacting the same language if they did not mean to answer the demands of the seventeenth amendment? You can not answer that point, Senators.

Now, I want to mention this point: What harm can come from seating this man? Every legislature that has not now acted will, because its attention has been called to this situation by this debate and this case, look after the situation hereafter. Most of the States have provided for it. No harm can come in the future from our action, Senators, but serious harm can come from this outrage that is contemplated against a sovereign State.

Just one other thing or two before I close.

Suppose, as the Senator from Georgia [Mr. GEORGE] said, the governor should undertake to fill this vacancy to the end of the unexpired term. The legislature could meet and take steps to prevent such a thing from being perpetrated against the State; and the Senate itself, if the governor permitted the next election to go by, could take steps to unseat Mr. NYE and declare his seat in this body vacant.

Our position is simply this: That Mr. NYE is entitled to a seat here until his successor shall be elected and qualified; and the election will be in June, just a little while off. What is the situation here? The Senate is in session. When will the Senate in all probability adjourn? Early in June. What is the idea of appointing this man now? In order that his State may be represented here. The Constitution warrants that course. The statute and constitution of the State authorize it. The governor has put his power into effect, and the Senator from North Dakota [Mr. FRAZIER] sits here begging us to seat Mr. NYE, but we quibble over a technicality for two days and a half.

What else is involved? To deprive a State of its lawful representation here is taxation without representation. The Federal Government will move with its forces in March to get income taxes out of the State of North Dakota.

The Constitution provides that North Dakota shall have two representatives here, a full quota, along with her sisters in the household of sovereign States. It is proposed that she be denied one of her representatives, but there is no proposal to cut off any of her taxes. You are proceeding against her as though she had both representatives here, while the Senate moves on to adjournment in June. I repeat, it is taxation without representation.

Let me say this in conclusion: I recall the time when the Great War came upon us and the world was cursed by the most destructive war of the ages. North Dakota, plucky, brave North Dakota, responded to the country's call. When we passed a law providing for the selective draft North Dakota responded whole-heartedly to the call, and her citizens volunteered. In one county the whole quota of soldiers volunteered, reported for duty without costing the Government anything. These boys put on their uniforms, they went across a sea infested with submarines, they went to the battle front in France, some of them died in defense of their country, and others came back lame and halt for life. North Dakota was there then. She wanted to go and do her duty and play her part, and she did it well. Was North Dakota backward then? No. The Congress, including the Senate, said to North Dakota, "Your sons have to go." They fought, and some of them died, and here they are to-day, through their governor and their Senator, begging this body to permit them to have representation in the Senate of the United States under the Constitution of the United States.

Mr. BLEASE. Mr. President, will the Senator permit me to ask him a question?

Mr. HEFLIN. Certainly.

Mr. BLEASE. I am informed that Senator Ladd died in June.

Mr. HEFLIN. Yes; about the 18th or 19th of June.

Mr. BLEASE. It was about six months before the Congress was to meet. If we vote not to seat Mr. NYE, is it not more an indication of a refusal to allow the governor of a State to dictate who shall be a Member of this body, than it is a question of depriving the State of representation, because in this case the governor had five months in which he could have ordered an election, and allowed a majority of the people, and not the governor, to dictate who should sit in this body?

Mr. HEFLIN. No, Mr. President; I went over that a little while ago, but probably my good friend from South Carolina was not in the Chamber. The governor gave as his reason for not calling a special election that it would cost his State about $200,000.

Mr. BLEASE. Yes, Mr. President; but if he had a constitutional duty to perform, what did he have to do with the cost?

Mr. HEFLIN. Mr. President, so far as I am concerned, he exercised his constitutional right. He acted, under the circumstances, as he thought wisest and best. He did not call the election because of the oppressed condition of his people. He tried to save them that expense. He believed, and his friends in the State, including a district attorney believed, that Mr. MOSES was not right in his contention. The governor felt that he had a right to appoint, and he did appoint. The Senator from that State who now represents the State takes the same view. All Senators on this side, with the exception of four or five take that view and a few on the other side take that view, and there will be more when the vote is taken, because I believe that conscientious Senators will take their stand on the side of justice and right and fair play, and will give the benefit of the doubt, if there is one, to the constitutional right of a State to have representation in this body.

No, Mr. President; I think the governor acted as he should have acted. If the Governor of Massachusetts had a right to appoint, if the Governor of Indiana had a right to appoint, if the Governor of Missouri had a right to appoint, this governor had a right to appoint. I have not much doubt about his authority. If I am able to construe plain English, the words "all vacancies," inserted in the law by the Legislature of the State of North Dakota, meant all vacancies occurring in offices with which that State has to do.

Is a United States Senator an officer? He has to be a citizen of the State. The people of the State elect him. The people there elect him; he must resign to the governor; he may be recalled by a vote of the people of North Dakota. What right would a State have to recall a United States officer when once elected for six years? The people in North Dakota have provided for recalling Senators if they wish to do so.

If Senators stand by their declarations they will vote to seat Mr. NYE, because they have said that if they could be impressed with the thought that North Dakota regarded this office as a State office they would vote to seat him. This act of the legislature providing for recall of a Senator by the State shows that they did regard it as a State office. That act, coupled with the provision of the act giving the governor the power to fill "all vacancies," and their constitutional provision for the filling of all vacancies arising from any cause, not "all except that of United States Senator," shows the intention of the people of North Dakota.

Mr. President, I want to say before I sit down that the half-clad and half-shod colonial troops who followed Washington over the frozen ground at Valley Forge, who left their bloody foot tracks in the snow fighting for liberty, self-determination, and government of the people, by the people, and for the people, not a government of technicalities, by technicalities, for technicalities, never dreamed that the day would come when anyone would rise in the Senate and seriously undertake to deny a sovereign State representation in this body upon a measly and miserable technicality.

Mr. BLEASE. Mr. President, if the Governor of North Dakota had performed his duty and ordered an election within that five months, would it have been necessary, or could it have been possible, for these Senators whom the Senator designates as technical lawyers to make this fight? Does not the Senator believe the governor neglected to do his duty?

Mr. HEFLIN. No; not in the least.

Mr. BLEASE. I think he did. I differ with the Senator.

Mr. HEFLIN. I think some technical lawyers would have found objection to that, and that they would find objection even to the Lord's Prayer. [Laughter.]

ORDER FOR RECESS

Mr. CURTIS. Mr. President, I submit a unanimous-consent request that when the Senate concludes its business to-day it take a recess until 12 o'clock on Monday.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

THE WORLD COURT

Mr. CURTIS. I move that the Senate proceed to executive business in open executive session for the consideration of the unfinished business.

The motion was agreed to, and the Senate, in open executive session, resumed the consideration of Senate Resolution 5 providing for adhesion on the part of the United States to the

protocol of December 16, 1920, and the adjoined statute for the Permanent Court of International Justice, with reservations.

Mr. WILLIAMS. Mr. President, I desire to address myself briefly to Senate Resolution 5, being the resolution introduced by the senior Senator from Virginia [Mr. SWANSON] and relating to our adherence to the Permanent Court of International Justice.

The President of the United States seeks our advice and consent to a protocol and statute creating an international court. Our treaty-making power is invoked.

Our advice will depend on our opinions. Our opinions will be based upon our knowledge of the facts and our understanding of our responsibilities. It is to be regretted that we are unable to take counsel of each other in executive session. The mere proffer of suggestions or the asking of questions is calculated to classify us for or against the pending resolution.

The discussion thus far has been of a very general nature and has consisted of arguments for and against the resolution. There has been an expectation that those who were in favor of the entrance of the United States into the League of Nations would be in favor of this resolution and that those who were opposed to our participation in the League of Nations would be opposed to our participation in the international court. This is true to the extent that those who were for the league are for the court. The sentiments of partisan politics which played such a large part in the political struggle waged for and against our participation in the League of Nations is manifested in the consideration of the pending resolution and some account must be taken of that prejudice. Pride of opinion manifests itself also and qualifies and impairs our ability for calm deliberation. This does not mean that the Senators who have thus far discussed the question have not done so in perfect good faith and in absolute sincerity, but it does mean that the question is not a new one to many of you and that it has a background in a partisan political struggle over the League of Nations. It is difficult, if not impossible, to discuss the question as we would if it were new and fresh and dissociated from any previous question.

The burden of the discussion has been borne largely by members of the Committee on Foreign Relations, and we have followed their addresses closely and with deep interest. We find the members of that committee in cordial disagreement on points which seem to them to be of vital moment.

Our attitudes vary. We are affected by different influences. We are aware that business men and financiers in this part of our country have international contacts which are unknown to those of us who come from the central and western parts of the country. It is very natural that their point of view should have its effect in this body.

Some of our Members have assured me that our adherence to this international court is a mere gesture—a throwing of a kiss across the seas—a general evidence of international good will—something meaningless. It is very evident that others view the resolution very seriously and are most apprehensive over the step it is proposed our country shall take.

Mr. President, while the discussion is yet general and before it arrives at acute stages in the discussion of particular amendments, conditions, or reservations I am prompted to propose a few questions which have occurred to me. I make bold to ask them because my personal reaction is that the President seeks my advice and that I am under personal obligation to give it.

May I preface my questions with a statement of the proposal as I understand it? On the 28th of June, 1919, the principal allied and associated powers made a treaty of peace with Germany. That treaty consisted of 15 separate parts dealing with various phases of the agreement of settlement, and there are 440 articles in the treaty. Part 1 of that treaty constitutes what is known as the covenant of the League of Nations, consisting of 26 articles. There is a short memorandum attached to the covenant of the League of Nations, which is called the annex and which recites the names of the States which were the original members of the League of Nations and the names of the States invited to accede to the covenant of the League of Nations. The United States of America is named as a party to the treaty of peace with Germany and the United States of America appears as an original member of the League of Nations in the annex. That treaty of peace with Germany did not receive the consent of the Senate of the United States, because it committed the United States to the covenant of the League of Nations. The Senate could not consent to our permanent union in that confederacy.

The League of Nations consists of a council, an assembly, a permanent secretariat, a labor organization, and a court. The assembly consists of representatives of the members of the League of Nations. The council consists of representatives of the British Empire, France, Italy, and Japan, together with representatives of six other members of the league. These six other members are selected by the Assembly of the League of Nations. The council is the upper house, the assembly is the lower house of the league. Membership in the League of Nations carries with it membership in the international labor organization, which is created under part 13 of the treaty of peace.

Article 14 of the covenant of the League of Nations provides that the Council of the League of Nations shall formulate and submit to the members of the league for adoption plans for the establishment of a Permanent Court of International Justice. The article further provides that the court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it and that the court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly of the League of Nations.

The Council of the League of Nations did not formulate the plans for the establishment of this international court, but at a meeting in London in February, 1920, decided to appoint a committee for the purpose of preparing plans for such a court, with the understanding that the committee when created would formulate such plans and present its report to the council. Such a committee was appointed and consisted of representatives from Japan, Spain, Brazil, Belgium, Norway, France, the Netherlands, Great Britain, Italy, and Mr. Elihu Root of the United States was also selected as a member by the council of the league.

This committee so selected met at the Peace Palace, The Hague, on the 16th of June, 1920, and held continuous sessions until the 24th of July, 1920, when they concluded their labors. The official report of the proceedings of this committee is recorded in this large volume. I have studied those proceedings and the observations of the various members of the committee and the final report of the committee to the Council of the League of Nations. The report of that committee to the council was agreed upon unanimously by the members of the committee and is quite similar in form to the addresses made to the people by constitutional conventions in the several States of the United States upon the submission of proposed new constitutions or proposed new amendments to State constitutions. It is their submission and address to the council. In addition to the report by this committee of 10 to the Council of the League of Nations the committee submitted some resolutions, which are in the nature of memorials, to the council of the league.

We will refer to this first committee of 10 as the Root committee. The report which the Root committee made to the Council of the League of Nations included what is known as the statute. This statute is a complete scheme for this international court and consists of 64 articles, divided into 3 chapters, which deal respectively with the organization, the jurisdiction, and the procedure for the court. It was submitted to the Council of the League of Nations on the 5th of August, 1920. The council of the league consists also of 10 members, and after they received the proposed statute there were a number of meetings of the council committee, as a result of which a number of changes were made in the proposed statute, and after the council committee had finished its labors they referred the statute to the assembly of the League of Nations.

There are 55 members of the Assembly of the League of Nations. The assembly appointed a subcommittee of 10 members to consider the statute as amended by the council, and that committee may be referred to as the assembly committee or the third committee.

The third committee made several important and radical changes in the proposed statute as prepared by the Root committee. This committee added the second paragraph of article 4 of the statute so that the article as changed reads as follows, the added portions being in italics:

ART. 4. The members of the court shall be elected by the assembly and by the council from a list of persons nominated by the national groups in the court of arbitration in accordance with the following provisions:

In the case of members of the League of Nations not represented in the Permanent Court of Arbitration, the list of candidates shall be drawn up by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by article 44 of the convention of The Hague of 1907 for the specific settlement of international disputes.

The third committee also changed article 5 of the statute so that the article as changed reads as follows, the added portions being in italics:

ART. 5. At least three months before the date of the election the secretary-general of the League of Nations shall address a written request to the members of the court of arbitration belonging to the States mentioned in the annex to the covenant or to the States which join the league subsequently, *and to the persons appointed under paragraph 2 of article 4*, inviting them to undertake, *within a given time*, by national groups, the nomination of persons in a position to accept the duties of a member of the court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. *In no case must the number of candidates nominated be more than double the number of seats to be filled.*

There were a number of new articles inserted in the statute by the assembly committee, and article 34 was changed materially.

The purpose of pointing out these substantial changes made in the statute as proposed by the Root committee is to show that the statute we are considering is not the statute proposed by the Root committee, but is the statute proposed by the committee appointed by the assembly of the League of Nations.

The report of the assembly committee was adopted by the assembly and the question arose as to how the finished product should be submitted for adoption. Article 14 of the covenant of the League of Nations provided that the plan for the court should be submitted to the members of the league for adoption. Two constructions of this expression were possible—first, that a resolution by the assembly would be sufficient to establish the court; second, that a convention ratified by the different members severally should be required. Anzilotti, who was the secretary of the assembly committee, and was also secretary to the Root committee, gave an opinion on this question as follows:

Although strong reasons speak in favor of the former solution—an assembly resolution—it seems that the latter should be adopted. It is a fact that certain governments and parliaments consider it necessary to embody the court constitution in a convention; further it seems to be the simplest way of opening the court to the access of the United States, to embody its constituent statute in a convention to which the States could adhere.

His opinion was adopted and on the 13th of December, 1920, the Assembly of the League of Nations declared its approval of the statute—as amended by it. The assembly also provided that the statute should be submitted to the members of the League of Nations for adoption in the form of a protocol duly ratified and declaring their recognition of the statute. The assembly further declared that when the protocol had been ratified by the majority of the members of the league the statute of the court should come into force.

The protocol is a draft or memorandum of an agreement arrived at through negotiation for the signature of the negotiators. This protocol is a declaration by the members of the League of Nations of their acceptance of the statute of the Permanent Court of International Justice which was approved by the Assembly of the League of Nations on the 13th of December, 1920. As it comes to us the protocol is a treaty. There is attached to the protocol the proposed statute creating the international court, and it is this protocol and this statute which has been submitted to us for our advice and consent.

I first direct the attention of the Senate to the change made by the assembly committee in articles 4 and 5 of the statute in the draft as submitted by the Root committee. It has been stated a number of times that the judges who are elected by the Council and Assembly of the League of Nations are nominated by The Hague Court of Arbitration. We are told it is that tribunal which nominates the judges. Article 5 of the statute provides that the secretary general of the League of Nations shall address a written request to those members of the court of arbitration belonging to the states mentioned in the annex to the covenant or to the states which join the league subsequently and to the persons appointed under paragraph 2 of article 4 of the statute, inviting them to undertake the nomination of persons acceptable for judges.

Those members of the Permanent Court of Arbitration of The Hague who are not members of the League of Nations do not receive invitations to nominate judges. In other words, the Permanent Court of Arbitration of The Hague could be disbanded altogether, and nominations can be made just as effectively by those states mentioned in the annex to the covenant of the League of Nations and the states which joined the League of Nations subsequently.

It has been conceded that the judges are elected by the league—their salaries are fixed by the league and paid by the league; their pensions are fixed and paid by the league; access to the court is determined by the council of the league—and my first question is whether the judges of the court are not also nominated by the league. On this point the Root committee said:

The new court, being the judicial organ of the League of Nations, can only be created within the league. If it is to be a component part of the league, it must originate from an organization within the league and not from a body outside it.

The Constitution of the United States became effective when it was ratified by the people in nine of the thirteen original States. The statute which creates the international court became effective when it was ratified by a majority of the members of the League of Nations. Is it not the judgment of the Senate that the act of ratification was the effective act which created the court and put its machinery into motion?

It is conceded by those Members of the Senate who have spoken on the subject that the international court gets its authority to render advisory opinions from the provisions of article 14 of the covenant of the league and not from the statute of the court. It is also apparent that the court has a compulsory jurisdiction conferred on it in labor cases. Articles 415, 416, 417, 418, and 419 of the treaty of peace with Germany—the Versailles treaty—confer such compulsory jurisdiction upon the court and, indeed, give the court the power by its decisions "to indicate the measures, if any, of an economic character which it considers to be appropriate and which other governments would be justified in adopting against a defaulting government."

Part 13 of the Versailles treaty provides that the original members of the League of Nations shall be original members of the labor organization and that membership in the League of Nations shall carry with it membership in the international labor organization.

The League of Nations is a confederacy of governments, with a council, an assembly, a secretariat, an international labor organization, and a court. Is it not the judgment of the Senate that this court is part and parcel of the League of Nations?

My next inquiry is whether this court is really a court as we in the United States understand that term. Is it really a tribunal established for the administration of justice?

The resolutions or memorials which I referred to as having been submitted by the Root committee to the council of the league were transmitted by the council to the assembly, and by the assembly to the assembly committee. These memorials or recommendations were three in number. The third resolution of the Root committee expressed a wish that the Academy of International Law founded at The Hague in 1913 might be set in operation again side by side with the Permanent Court of International Justice and the Permanent Court of Arbitration at the Peace Palace of The Hague. That recommendation was brushed aside with the statement that this academy is a private institution which possesses its own machinery for action and that the assembly did not think the League of Nations need intervene on its behalf.

The second resolution of the Root committee proposed to set up an international court of criminal justice, the duties of which would be to punish international criminals. That recommendation was brushed aside with the statement by the assembly that if crimes of this kind should in future be brought within the scope of international penal law, a criminal department might be set up in the Court of International Justice, and in any case that the consideration of that problem was premature.

The first resolution of the Root committee asked that the peace conference at The Hague should be revived, and that it should begin again to sit and continue the work it began in 1899 and in 1907 for the purpose of stating and establishing the existing rules of the law of nations—the formulation of a system of international law. This resolution was laid on the table with this statement:

The committee is of unanimous opinion that there exists a body whose duty it is to continue the work of the peace conference at The Hague, that the body in question is this assembly, here met together, and that an assembly of a similar kind set up beside it would be entirely useless.

The recommendations of the Root committee were rejected. The court as created, therefore, was not furnished with any body of laws, as our courts are, to be applied by the court to the facts presented to it from time to time for decision.

Again, article 36 of the proposed statute gives the court jurisdiction of those cases only which the parties refer to it and

contains the so-called optional clause under which those who sign the protocol recognize certain jurisdictions of the court as compulsory. The pending resolution provides for our adherence to the statute without accepting or agreeing to the optional clause for compulsory jurisdiction as contained in the statute. The work of the Root committee was transformed by the introduction of this optional clause, and in speaking of that Judge Loder, a member of the Root committee, gave his opinion of the meaning of the words—

> The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it—

as they appear in article 14 of the covenant. It was his opinion that the court would take cognizance of all cases that the parties—that is to say, parties A or B or C—will submit to it in the future—

> otherwise why create this court? In order to duplicate the court of arbitration? To continue a deplorable state of affairs and administer justice between two contesting parties only after having obtained their mutual consent and their agreement on the wording of the complaint and on the choice of judges? That is not worth the trouble. It is only too well known that those who feel themselves offenders in the eyes of the law and of justice know how to profit by their position; they never agree to anything and make exceptions and subterfuges serve their ends. The difference between arbitration and justice is not to be found in the nature of the decisions rendered. In both, law and equity may be protected. * * * It was only the institution of the League of Nations that made possible a real court of justice, a court where the plaintiff would no longer have to wait upon the good will of his opponent. It is such a court that is intended in the covenant and not a useless duplication.

By "duplication" Judge Loder was referring to arbitrations, Judge Loder is now a member of this court. I desire not to be understood as favoring the plan of the Root committee on this phase of jurisdiction, but refer to it here to show the attitude of one of the leading and most influential judges.

Is it the judgment of the Senate that this institution, which has no body of law and which by its process may not bring a guilty or an unwilling defendant before it, is really a court of justice?

Mr. President, I have recently read again a plank of the national platform of the Republican Party adopted at Cleveland on the 12th of June, 1924. It reads as follows:

> We indorse the Permanent Court of International Justice and favor the adherence of the United States to this tribunal as recommended by President Coolidge. This Government has definitely refused membership in the League of Nations and to assume any obligations under the covenant of the league. On this we stand.

The two sentences in this plank of our party platform were believed to be consistent and in harmony with each other by the Republicans of the country. We were not seeking the votes of the proleaguers in the first sentence and the votes of the antileaguers in the second. We accepted that plank in our platform believing this court was not part of the League of Nations and believing that our adherence to that tribunal would not drag us pro tanto into the league.

The resolution provides that we adhere to the court. This means that we join the United States to the court; that we become a party to the statute creating the court; that we become identified with that part of this organization of the League of Nations as the members of the league themselves are identified.

We become concerned with the meaning of the words:

> the assumption of any obligations by the United States under the covenant of the League of Nations.

We have a right to join the court, because we are named in the covenant of the League of Nations as an original party to the league. Those who prepared the statute which creates the court and invited us to join are entitled to their understanding of the obligations we would assume. There are legal obligations, financial obligations, and moral obligations. Do we assume any of them under the covenant of the league?

I have discussed the legal relationship between the league and the court and our proposed legal relation to the court. The pending resolution provides that we shall pay our fair share of the expenses of the court. These expenses are now borne as an obligation of the League of Nations under its duty to create the court. What of the moral obligations? If we join the court, we will give it our full moral support. There will be no moral reservations in our act.

Mr. President, if our moral support of this international court is yielded willingly, graciously, and joyously, will it not mean that the time may never come in the exercise by this court of its anomalous jurisdiction and in its application of that various language of right which we speak of so vaguely as international law, when the great weight of public opinion in the United States will not constrain our Government to yield generally to the jurisdiction of the court? If we adhere to the protocol and statute, we must contemplate that we may appear at that bar whenever we are cited to appear at the instance of a complaining State. I need not refer to the consequences of such appearances. In addressing the Root committee, Leon Bourgeois said:

> Speaking in the name of the Council of the League of Nations, I have wished simply to show what a large place in our eyes the court of justice must take in the international organization of the world. We see it armed with the highest moral power and organized for penetration as deep as possible into all the points of contact in the life of nations. We wish to establish between the general powers of the council and the assembly and the special powers of the court the closest solidarity and the most profound harmony.

Mr. President, how deep can the penetration of this court be into the points of contact in the life of nations? One of the members of the Root committee said it would include questions concerning the interpretation of a customs tariff and emigration, but the treaty of Versailles indicates much more strikingly and suggestively what they may be—

> as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labor supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease, and injury arising out of his employment, the protection of children, young persons, and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education, and other measures.

I address myself next, Mr. President, to that part of article 14 of the covenant of the League of Nations which confers upon the court the power to give an advisory opinion upon any dispute or question referred to it by the council or by the assembly. It would appear from a reading of the article that if this were really an independent World Court then the court might give an advisory opinion to any government in the world which might request it, but regardless of that we are met with this power in the court conferred by the covenant of the league. It is as competent for these advisory opinions to be rendered at the request of the assembly as it is that they may be rendered at the request of the council. It must be remembered that the members of the league, under article 15 of the covenant of the League of Nations, may refer their disputes to the council. On this point the Root committee, in its unanimous report, says:

> Of course the court can only take judicial cognizance of a case brought by the contesting parties and not by the council or assembly; but if the parties have decided to bring it before the council or assembly, they must not be surprised if the council or assembly refer the case to the court.

The fifth reservation in the pending resolution provides—

> that the United States shall be in no manner bound by any advisory opinion of the Permanent Court of International Justice not rendered pursuant to a request in which it, the United States, shall expressly join in accordance with the statute for the said court adjoined to the protocol of signature of the same to which the United States shall become signatory.

In my opinion, Mr. President, this reservation is not calculated to maintain the dignity, independence, and equality of the United States with the dignity, independence, and equality of the great powers represented on the Council of the League of Nations. The representatives of Great Britain, France, Italy, and Japan sitting on the council may prevent the submission by the council to the court of any question which may affect the interests of those countries. The purpose of the fifth reservation, which I have just read, is doubtless to effect the same end, but I submit that it does not do so. It declares that we shall not be bound by an advisory opinion not rendered pursuant to our request, but it does not provide that no advisory opinion shall be given by the court if that advisory opinion in any manner affects the United States unless the United States shall have consented that the court may take jurisdiction of that question. Unless such a condition as this be inserted as a condition for our acceptance, we would occupy a position of inferiority in comparison with those powers who can prevent the submission of such questions to the court, and this we can not do with dignity and honor.

Mr. President, I have wondered whether we could have a real Court of International Justice until we arrived at a world consciousness of right—at least until we could state our common international rights in an agreed body of international law. I have made this statement and raised these questions to aid us in arriving at a good judgment.

The questions are asked in good faith and for my information and enlightenment.

Mr. WALSH. Mr. President, I repeat what I said at the opening of my former address on this subject—that I shall welcome interruptions by any Senator at any time, either for the purpose of discussion or for the purpose of information.

I venture to say, however, before beginning my address, that I am not able to concur with the view stated in the address to which the Senate has just listened—that every Senator who has spoken in favor of the pending resolution has either declared or admitted that the power of the court to render advisory opinions is derived from article 14 of the covenant. Indeed, three of those who have spoken upon the subject—the Senator from Virginia [Mr. SWANSON], the Senator from Wisconsin [Mr. LENROOT], and myself—each expressly asseverated that it is not derived from article 14 of the covenant, but is derived from the statute of the court; that is to say, that the statute of the court provides that in addition to controversies submitted to the court by express agreement of the parties it shall have jurisdiction over any matter specially referred to it by treaties and conventions in force. So that it takes jurisdiction of that particular subject by reason of the fact that it is so provided in the treaty of Versailles, the covenant of the League of Nations, just the same as other provisions of the treaty of Versailles give to the court compulsory jurisdiction because the parties have agreed to it, and just the same as more than 20 other treaties give to the court jurisdiction because so provided in the treaties between them.

Mr. WILLIAMS. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Missouri?

Mr. WALSH. I yield to the Senator.

Mr. WILLIAMS. The Senator does not mean to say that the League of Nations is included only in the first part of the treaty of Versailles?

Mr. WALSH. Oh, the treaty contains many references to it.

Mr. WILLIAMS. I mean the covenant of the League of Nations includes not only part 1 but includes also part 13 of the treaty, does it not?

Mr. WALSH. Part 13 refers to the covenant, of course.

Mr. WILLIAMS. Yes; but section 392 of the treaty provides, does it not in terms—

> The International Labor Office shall be established at the seat of the League of Nations as part of the organization of the league.

Mr. WALSH. Yes.

Mr. WILLIAMS. So that when we speak of the covenant of the League of Nations we speak not only of part 1 of the treaty of Versailles but of part 13 also?

Mr. WALSH. The Senator must not say "we speak," because we do not. Article 1 is the covenant of the League of Nations. Article 13 deals with the organization of the International Labor Office.

Mr. WILLIAMS. Quite true; but, in order that there may be no misunderstanding between the Senator and myself, would he not say that part 13 is included as part of the League of Nations organization?

Mr. WALSH. The International Labor Office is a part of the organization of the League of Nations.

Mr. WILLIAMS. And is contemplated by the covenant of the League of Nations?

Mr. WALSH. As contemplated by the covenant of the League of Nations.

Mr. WILLIAMS. Therefore the first reservation, which refers only to part 1 of the treaty of Versailles, is not quite sufficiently inclusive for your own purposes?

Mr. WALSH. As far as I am concerned, the reservation means nothing whatever to me.

Mr. WILLIAMS. It does not?

Mr. WALSH. Not a thing.

Mr. WILLIAMS. It means very much to me.

Mr. WALSH. We sign the protocol for the statute, and that is all the obligation we assume, whatever there is there; and of course we assume no obligation to do anything else, so that reservation No. 1 is merely a declaration of an existing condition of things. That, however, is quite aside from the matter to which I had reference.

Mr. WILLIAMS. I admit that.

Mr. WALSH. I desire, however, to make an inquiry of the Senator. Who was the author of the quotation to which the Senator referred, telling about a vast number of questions of policy that would come before the World Court?

Mr. WILLIAMS. I suppose those who drew the Versailles treaty, as it is section 1 of the labor organization of part 13 of the Versailles treaty that I read; I suppose Clemenceau, Orlando, the representative from Japan, and so forth.

Mr. WALSH. The Senator was quoting from article 13 of the treaty?

Mr. WILLIAMS. I certainly was.

Mr. WALSH. And that was indicating the scope of the activities of the International Labor Office?

Mr. WILLIAMS. And of the international court.

Mr. WALSH. Of what?

Mr. WILLIAMS. The international court.

Mr. WALSH. Read what it says about the court, please.

Mr. WILLIAMS. Read it yourself, sir.

Mr. WALSH. Very good. I venture to say that the Senator will find nothing in article 13 of the Versailles treaty which undertakes to give to the World Court jurisdiction over any of those questions. I think, perhaps, I shall have a word to say about that at some other time.

Mr. REED of Missouri. Mr. President——

The PRESIDING OFFICER (Mr. JONES of Washington in the chair). Does the Senator from Montana yield to the Senator from Missouri?

Mr. WALSH. I yield.

Mr. REED of Missouri. May I ask the Senator if he contends that if we enter the World Court we will not become subject to the so-called statute of the court?

Mr. WALSH. The Senator uses a very queer expression. We do not become "subject" to anything. Of course, if we sign the protocol, we agree to accept the court with that statute.

Mr. REED of Missouri. That is what I meant.

Mr. WILLIAMS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the junior Senator from Missouri?

Mr. WALSH. I yield.

Mr. WILLIAMS. I hope the Senator was not offended by the pertness of my retort. I did not know the Senator was really asking for information; I thought he was indulging in a somewhat argumentative colloquy with me. I have no hesitation, if the Senator pleases, in referring to the articles contained in part 13. The court is referred to in articles 415, 416, 417, 418, and 419 of the Versailles treaty, and article 418 is the article which not only confers upon the court compulsory jurisdiction in cases of this type, but provides for the sanctions which the court itself may impose in the execution of its judgments. I did read that, but I can read it again.

Mr. WALSH. Just a moment. I would be able to point the Senator to a large number of sections of the Versailles treaty referring to the court, and providing that controversies arising under those sections should go to the court; that is to say, if the parties get into a controversy involving a legal question, that legal question shall go to the court for determination.

Mr. WILLIAMS. Yes; but the Senator will remember, will he not, that I spoke of those in connection with the moral obligation which we assume, and the force of public opinion in America, which would drive us necessarily to accept the jurisdiction of the court. That was my judgment, as a matter of opinion.

Mr. WALSH. In the first place, we are not a member of the International Labor Office at all.

Mr. WILLIAMS. We become pro tanto such.

Mr. WALSH. I can not agree with the Senator at all in that.

Mr. WILLIAMS. I understand the Senator can not, and that gives rise to the argument.

Mr. WALSH. The article to which the Senator has referred itself provides just how a nation not a member of the League of Nations can become a member of the International Labor Office, and it is not by subscribing to the protocol of the World Court. It is by an entirely different process.

Mr. WILLIAMS. Let me ask the Senator one question. Does he not think it would have been wise in Mr. Hughes to omit the reference to part 1, in line 11, of the second page of this resolution?

Mr. WALSH. I think it is all comprehensive.

Mr. WILLIAMS. The Senator thinks it amounts to nothing anyway?

Mr. WALSH. As a matter of fact, it does not. No one can successfully assert that it does. No one can maintain that it helps the situation in any degree whatever. We do not become a member of the League of Nations; we assume no obligations of the covenant when we sign the statute. That is all we bind ourselves to. So that reservation 1, in my opinion, is of

no more importance than reservation 4. Reservation 4 provides that the statute shall not be changed without the consent of the United States. That may satisfy some timid souls, but those of us who pretend to know something about international law know that no treaty can be changed except by the agreement of all the parties to it. So that when we sign this treaty, put out on the 16th of December, 1920, it can not be changed without our consent any more than any treaty of the hundreds that we have signed can be changed without our consent.

Mr. JOHNSON. Mr. President, will the Senator permit just one query?

Mr. WALSH. I yield.

Mr. JOHNSON. The Senator regards the reservations, then, as mere shams?

Mr. WALSH. Oh, no; by no means. Reservations 2 and 3 have a real effect.

Mr. JOHNSON. But 1 and 4?

Mr. WALSH. Numbers 1 and 4 are simply put in there for the purpose of quieting the fears of some one who might otherwise feel that we are bound in some way or other in addition to what is provided in the instrument that we shall actually sign.

Mr. JOHNSON. But they are of no consequence whatever?

Mr. WALSH. From my point of view they are not.

Mr. JOHNSON. May I not ask a further question? The Senator himself would not have any reservations in going into this court?

Mr. WALSH. Certainly I should not think of going into the court without reservation 2, by which we participate in the election of judges. Neither would I consent, of course, to our going into the court without reservation 3, by which we say that we will pay our share of the expenses of maintaining the court.

OBJECTIONS ANSWERED

Mr. WALSH. Mr. President, as heretofore observed the assailants of adhesion to the protocol of signature of the Permanent Court of International Justice content themselves as a rule with assertion, without attempting to justify their charges by anything that can be dignified as argument.

By going into the court, as becoming signatory to the protocol is popularly expressed, the United States becomes entangled in the political controversies of Europe. How? No one has attempted to explain. By going into the court the United States abandons the Monroe doctrine. How? Silent still. By going into the court the United States enters the League of Nations. How? It does not subscribe to the covenant; it has no seat in either the council or the assembly, except in the rare event of and only during the election of judges. It assumes no responsibility for anything the league does or omits to do. Thus it goes on. The covenant of the league is the constitution of the court. The treaty of Versailles is the law of the court. The treaty of Versailles, the law of the court, is violative to the Constitution of the United States, ergo it is contrary to the Constitution to go into the court. The judicial power of the United States is being transferred in contravention of the Constitution to an alien tribunal. How much of this kind of stuff is inspired, or indorsed by members of this body? In an article carrying much like it appearing sometime ago it was said, "It is conceded the court is controlled by France." Conceded by whom? What are the facts? The French Government lost in the first matter coming before the court in which it was interested, the inquiry as to whether the competency of the International Bureau of Labor extends to those engaged in agricultural labor. It prevailed in the next, being an inquiry related to the one last referred to as to whether the same bureau was entitled to go into the subject of methods of agricultural production. It lost in the next, the matter of the Tunis and Morocco nationality decrees. Its ally, Poland, was defeated in three controversies with Germany, and prevailed in another with the free city of Danzig. It won in the Wimbledon case, brought in the interest of one of its nationals against Germany. From this summarization, embracing all matters before the court in which France might seem to be concerned, those who assert or "concede" that France controls the court—if there are any such—are deluding themselves or attempting to delude the public.

Perhaps the incident adverted to ought not to be dignified by argument in view of the fact that it was shortly followed by the appearance in the very same paper of a cartoon, the purpose of which was to convey the impression that Great Britain, not France, controlled the court.

This style of argument is not, however, monopolized by irresponsible writers for the press. The distinguished chairman of the Senate Committee on Foreign Relations has not disdained to pursue it. In his speech in Boston, according to press reports, he epitomized his attitude by remarking, "I am for a court controlled by international law and not international politics." Certainly he is; so are we all. Lord Lytton observed that "Nothing lies like a simile," to which he might have added, "except an epigram." Obviously the epigram of the Senator carries an intimation that the Permanent Court of International Justice is controlled by international politics. What justification is there for such an imputation against the court? One of its most distinguished members is the eminent American international lawyer, John Bassett Moore, universally admired as he is universally respected in this country. Are we to understand the accusation as extending to him? Just what particular variety of international politics as distinguished from international law controlled Mr. Moore in any decision or opinion he ever rendered or joined in rendering as a judge of that court? The idea is absurd. No member of this body harbors or can harbor any such suggestion. The proposition as to him will be rejected, I venture to say, by every reflecting man in America. His high character would free him from the charge even though he were not free, as he is, from any special interest in any particular solution of any case thus far heard before the court.

Well, if we acquit Mr. Moore of being controlled by international politics or controlled by any consideration save the law and his sense of justice in any particular decision in which he participated, how shall we attribute less worthy motives to any other judge who concurred with him? If Mr. Moore votes one way, guided by the law, and Mr. Huber or Mr. Loder votes with him, how can it be asserted that the concurring judge was not equally influenced by the same considerations as he? Judge Moore voted with the majority in every case before the court in which he sat save that he dissented on the question of jurisdiction in the Marrommatis case, in which the court held with the Greek Government against that of Great Britain that the jurisdiction of the court extended to controversies arising out of a claim preferred against one state by another in behalf of a national of the latter against the former. It will require some astuteness to discern in that particular decision the controlling influence of international politics wielded by puny Greece against puissant Albion. The record disproves the intimation involved in the senatorial gibe.

But perhaps it was not intended it should bear the invidious significance plainly if not necessarily attributable to it. Perhaps it was not intended that the remark should carry any further import than that in the absence of an international code the court would have no law by which it would be guided and would perforce solve the problems before it upon political considerations.

This subject having been dwelt on by the junior Senator from Missouri [Mr. WILLIAMS], I shall esteem it a personal favor if he will listen for a while to what I have to say upon the matter.

Mr. WILLIAMS. I am always interested in what the able Senator from Montana has to say.

Mr. WALSH. In other words, that codification of international law should precede the establishment or at least the functioning of a world court. There are two classes of persons entertaining this idea. In the first place, there is the wise guy who discloses his attitude by sapiently inquiring, "What law will the court administer?" Then there is a considerable body of earnest friends of peace who want war outlawed and insist upon the establishment of a court with compulsory jurisdiction, taking cognizance of all controversies between nations and resolving them in accordance with international law which has undergone codification.

Mr. WILLIAMS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Missouri?

Mr. WALSH. I yield.

Mr. WILLIAMS. The Senator is not referring to Mr. Root and his nine colleagues who passed the resolution providing for the codification of international law as "wise guys?"

Mr. WALSH. Not at all. They were seeking to advance the cause of the codification of international law and the work is now progressing, as I shall discuss at length in the course of my remarks.

Mr. WILLIAMS. The Senator means the committee of which Mr. Wickersham is a member?

Mr. WALSH. Yes.

Mr. WILLIAMS. They decided to do that in 1924?

Mr. WALSH. Yes.

Mr. WILLIAMS. My point was made in connection with the statement that the absence of the codification of international law and the absence of law which could be applied by the court in the decisions which they should make was something unknown to us.

Mr. WALSH. I venture to say it is not at all unknown to us, as I shall demonstrate, I undertake to say, to the entire satisfaction of the junior Senator from Missouri. The entire substance of that complaint is that instead of proceeding in 1922 toward the codification of international law the initial steps were taken in 1923.

Mr. WILLIAMS. In 1907.

Mr. WALSH. I am speaking about the recommendation of the Root committee to the Assembly of the League of Nations, of the advisability of taking steps for the codification of international law. At that time Lord Cecil admitted that, in view of what had happened during the war, he thought it was an inopportune time to take up the matter; but so great was the pressure from the other countries that the very next year—1923—the Assembly of the League of Nations took the initial step toward securing a codification of international law.

Mr. WILLIAMS. At the same meeting which Lord Cecil, of South Africa, attended when he made those observations about the codification of international law, and moved that the resolution of the Root committee be laid on the table, another member of the same committee stated that the Assembly of the League of Nations itself was competent to draft that code and that they would draft the law for the court.

Mr. WALSH. Whatever he may have said, the fact about the matter is that the Assembly of the League of Nations has not undertaken to do anything of the kind.

Mr. WILLIAMS. The Senator does not interpret correctly or state correctly the facts which occurred at that meeting of the third committee.

Mr. WALSH. I do not undertake to question that some man may have said so, but what does it amount to?

Mr. WILLIAMS. It amounts to this. There were five members of the subcommittee who were also members of the Root committee, and the action of the Root committee was reversed, and its work with respect to those memorials was emasculated.

Mr. WALSH. The Senator ought to make himself a little more clear. The Root committee recommended a certain course of procedure, that being a codification of international law. When the matter came before the Assembly of the League of Nations, the assembly declined to take up the matter at that time, and it was disposed of by being laid on the table. The next year, however, the Assembly of the League of Nations, not deeming that it, an aggregation of politicians and statesmen, was adequate to the task, appointed a committee of international lawyers to lay the foundation for the development gradually of international law. I propose to discuss that at some length.

Mr. REED of Missouri. Mr. President, may I ask the Senator a question?

Mr. WALSH. In a moment. So that the whole sum and substance of that complaint is that the Assembly of the League of Nations dismissed the recommendations of the Root committee in 1922, but practically started in to put them in force in 1923.

I now yield to the senior Senator from Missouri.

Mr. REED of Missouri. I merely want to get the Senator's view and not to enter into any debate on the question. I believe they did proceed, did they not, to materially change and alter the recommendations of the committee?

Mr. WALSH. They did in a most important particular. I discussed that in an earlier speech. The Root committee recommended giving to the court compulsory jurisdiction. When it came before the politicians and statesmen they were not quite as far advanced as the international lawyers and they would have nothing of that, and of course there is no place that I know of in the family of nations where that proposition would encounter more stubborn resistance than right here in this body.

Mr. REED of Missouri. Exactly; but the amount of it is that whatsoever we have in the nature of an international statute, if we can so designate it, it is the enactment of those Europeans, those men whom the Senator designates as the politicians of Europe. They are the ones who finally gave us that which is now attached to the protocol.

Mr. WALSH. That is an error. But the Senator must not speak of them as European politicians, because nearly every Republic of the Western Hemisphere is a member of the Assembly of the League of Nations and participates just the same as the European nations. But the Senator is in error again, because the draft was made by a committee of jurists, one of whom was from Cuba, another from the United States, and the third—I was going to say the third was from Canada, but I am not sure. One of them was from the United States and another from Cuba.

Mr. REED of Missouri. I am not in error, for I have not said anything about it except that they were a committee of lawyers.

Mr. WALSH. European lawyers, the Senator said.

Mr. REED of Missouri. The Senator is mistaken, or else I miscalled the word. I said that whatsoever we have to-day is that which has been promulgated by the league, which the Senator characterizes as political elements—I will not say of Europe, having been corrected; but the political elements that are assembled in the League of Nations. That is what we have now.

Mr. WALSH. This is what we have. The Council and the Assembly of the League of Nations took the draft that was thus prepared and they amended it in certain particulars and then submitted it to the approval of any nation which cared to approve it and sign. That is what we have.

Mr. REED of Missouri. So that this so-called statute, in so far as it has any validity, gets its validity from foreign governments.

Mr. WALSH. Why, of course. We did not have any part in it. Up to the present time we are not signatories to the treaty.

Mr. REED of Missouri. And from what the Senator characterizes as "political elements."

Mr. WALSH. Of course. Politics, of course, always control treaties.

Mr. REED of Missouri. The statute which we are now asked to adopt by signing the protocol is something that emanated from members of the League of Nations, and the same power that made it can amend it and change it, can it not?

Mr. WALSH. No; it can not.

Mr. REED of Missouri. Why not?

Mr. WALSH. In the first place, the Senator is all wrong in saying they made it. They did not make it at all, any more than if the American Institute of International Law would draft a statute and then send it around through the Secretary of State of the United States and it would be signed by various members. The parallel would then be complete. The Council of the League of Nations appointed a committee of jurists, international lawyers, to draft the statute, and, having drafted it, it went to the council and the assembly, and they made some changes, and then it was sent around for signature.

Mr. REED of Missouri. Exactly. All that I am asking now, without any regard to the details of the matter, is whether the same instrumentality—I will use that term, for it is all-embracing—which produced the so-called statute can not amend that statute or change the statute?

Mr. WALSH. I discussed that with the Senator's colleague just a little while ago. If the Senator means to ask whether the council or the assembly can change the statute, or whether both together can change the statute, I should say flatly they can not.

Mr. REED of Missouri. I said the same instrumentality.

Mr. WALSH. Whatever the Senator may call it.

Mr. REED of Missouri. That is the one we have been spending some little time discussing.

Mr. WALSH. To repeat myself a little, there are two classes of persons entertaining this idea. In the first place, there is the wise guy who discloses his attitude by sapiently inquiring, "What law will the court administer?" Then there is a considerable body of earnest friends of peace who want war outlawed and insist upon the establishment of a court with compulsory jurisdiction, taking cognizance of all controversies between nations and resolving them in accordance with international law which has undergone codification.

The class first mentioned may be dismissed with curt comment; the latter is entitled to the most respectful consideration and to the most attentive study of the position taken by them. Both classes proceed upon the assumption that there is no such thing as international law, a view which the distinguished lawyers who drafted the statute did not accept, for they provided therein that the court in the consideration of cases should apply—

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states.

2. International custom, as evidence of a general practice accepted as law.

3. The general principles of law recognized by civilized nations.

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the

various nations, as subsidiary means for the determination of rules of law.

The third basis of the court's work so expressed (the general principles of law recognized by civilized nations), contrary to a not uncommon view, comprises a vast fund of law. It was frequently remarked during the war, considering the flagrant violation of rules long accepted, that there was no longer any international law, forgetting that the infractions related only to the laws of war, not the laws of peace. Moreover, the public mind is likely to be fixed in the contemplation of the subject of the relatively few principles upon which there is a diversity of opinion rather than upon the extensive field in which there exists practical unanimity. By reason of the vast fund of statutory law in our day, the view easily obtains that there is no other, but in every country habits and customs, enforced by judicial decisions dating from the time when the memory of man runneth not to the contrary, have all the force of statutory law. And so in the field of international law. Treaties without number are being constantly entered into, becoming the law governing the relations of the nations entering into them, but over and beyond such there exists a body of law growing out of the usages of nations and the eternal principles of justice universally recognized. So in the administration of domestic law in the various nations principles are applied that are recognized by the courts of all countries. Louisiana's judicial system is founded upon that of France, and yet in the domain of both substantive and procedural law the similarity to that prevailing in the adjacent States abounds, and a practitioner from another part of the Union is by no means a useless expense to a client having a cause before its courts. When Judah P. Benjamin took up the practice of the law in London he was not required to forget all the learning he had acquired in New Orleans. He found not a little of what he knew of the law common to the system with which he was familiar and that of which he was subsequently to become an ornament.

Every case thus far coming before the Permanent Court of International Justice has presented, if it did not depend entirely upon, the construction of a treaty. Though there is no international law—in the sense of a principle settled by agreement between the nations—fixing the rules by which treaties are to be interpreted, rules based upon reason relating to the interpretation of contracts and statutes are recognized and enforced by the courts of every civilized country, rules of substantially the same import, or at least not differing materially, and these the court in question and any international tribunal applies. But beyond such, in every case the court is expected to apply the principles of reason and justice, which, according to Marshall, quoting from Thirty Hogsheads of Sugar *v.* Boyle (3 Wheat. 327), "constitute the unwritten law of nations."

Applying those principles, our Supreme Court without any code has developed and applied a great body of international law. It is rather remarkable that with the history it has written any American should sneeringly inquire respecting the tribunal under review, "What law will the court apply?" In attempting thus to apply the general principles of reason and justice that court, as it declared in Hilton *v.* Guyot (159 U. S. 113–163), has recourse to "judicial decisions," "the works of jurists and commentators," and "the acts and usages of civilized nations."

The success with which the Supreme Court has met the condition now confronting the Permanent Court of International Justice has prompted the cavillers to say, "Ah, yes! but the Supreme Court took as its guide the Constitution of the United States, while the World Court would have no guide or would be guided by its constitution, the Covenant of the League of Nations." The Constitution of the United States affords no guide whatever to the Supreme Court in the determination of questions of international law. It announces no principles of international law, either general or special. The sources to which the court went for aid are indicated in the extract from its opinions heretofore quoted. The Covenant of the League is equally barren as a source of international law, even if it were the constitution of the court, which, as heretofore stated, it is not. The Permanent Court of International Justice will determine the law international in the same manner and with the same command of the sources of enlightenment as the Supreme Court of the United States has determined and will determine it.

I am not to be understood as decrying the value of the codification of international law. In my estimation it is by no means an indispensable condition to the orderly functioning of a world court. Its chief value to my mind lies in the fact that there probably would be more frequent resort to the court if the legal principles it is to apply were more specifically and authoritatively set forth. But even if the law were codified, the outcome of any international controversy submitted to the court would still be shrouded in mystery. If there were no doubt about what the law is, if its application to a complicated situation were perfectly clear, there would be no occasion to resort to a judicial tribunal and there would be no appeal to the court.

No small part of the business of the appellate courts, perhaps it would not be inaccurate to say the major part of their work, arises out of disputes concerning the interpretation and application of statutes. Cases presenting questions of constitutional law will illustrate the truth of the view here expressed that international controversies without number will arise, though the law of nations be codified, and that doubts as to what the decision of an international court may be in any particular case will be by no means dispelled. I speak on this matter in the light of some personal experience. The State of Montana adopted a civil code in 1895 by which rights and duties were defined. It consisted of the California code, with minor modifications induced by local considerations and views introduced by a commission which labored for three years in perfecting it. High hopes were excited by enthusiasts. An eloquent member of our bar once holding a seat in this body, in urging codification, was accustomed to quote the beautiful language of Lord Brougham, who said:

> It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence.

The code did not, however, put the lawyers out of business, nor diminish in any degree the demand for their services. The ordinary citizen, even the more or less cultivated man, found the code but little aid in his business transactions. In a tangled affair he rarely, if ever, appreciated the particular provision of the code, if there was one, which offered a solution. He was never sure that there was not some other provision qualifying one which seemed to be applicable. He easily learned, if he did not always suspect, that lawyers differed about the construction to be given to many of the code provisions. In consequence of such difference our courts have been busy even to this day construing the code and applying its provisions to the facts developed in disputes coming before them for determination. It is doubtful, to say the least, whether any substantial value is to be assigned to our civil code and whether it might not have been just as well to leave the courts free to ascertain the law from the law writers and judicial precedents.

The California code, on which ours is modeled, as stated, is the work largely, as is well known, of David Dudley Field, the original of which he vainly endeavored to have adopted by the State of New York. Most of the states of the Union get along very well without a civil code and not a few without even a code of civil procedure. Some of them without a complete penal code, the common law, supplemented by statutes, sufficing to meet the needs of the administration of justice.

The Permanent Court of International Justice has functioned satisfactorily thus far, though international law has not been codified, and there is no danger that it will be brought to an impasse or be obliged to resort to international politics to solve problems which may be legitimately brought before it in the future.

Let the significance of the proposal that the organization of a world court, or at the least the support of such by the United States be postponed until international law is codified, be clearly understood.

From much that has been said on the subject in connection with the discussion through the country of the very matter now before the Senate one gains the impression that the view is entertained by the advocates of codification, as a condition precedent to our support of a world court, that the undertaking they propose is a relatively simple matter, involving no considerable delay. The fact is that the task is, as is recognized by the international lawyers and statesmen who have for years been engaged in the effort to begin it, stupendous, the obstacles all but insurmountable, and the achievement not a matter of days or of months but of years. A beginning has been made, but the most hopeful of the enthusiasts do not look for a completion of the work within less than 25 years, and it may extend over a century. The agitation for the formulation of such a code has been in progress for over 50 years, having attained much of its impetus through the efforts of David Dudley Field, before referred to, who, having had the benefit of a similar work by Jeremy Bentham, issued in 1827, published in 1873 his Code of International Law. The same year there was

organized at Ghent the Institute of International Law, which has since persistently urged the wisdom and necessity of such a code. Another organization was effected the same year at Brussels for the express purpose of promoting that end, known as The Association for the Reform and Codification of the Law of Nations. Of this institution the editors of the American Journal of International Law said:

> The title adopted by the association at that time reflected the belief then widely entertained, in which Mr. Field's influence may also be recognized, that a code of international law must precede any general national resort to arbitration.

They continue:

> Subsequent experience has shown, however, that international arbitration is not dependent upon a general codification of international law, and even where the ascertainment of the law to be applied is a prerequisite to arbitration, special rules governing the decision of the particular question submitted may be adopted by the treaty of arbitration, as, for example, in the Geneva Arbitration under the treaty of Washington between the United States and Great Britain and in the Venezuela Boundary Arbitration, under the treaty of February 2, 1897, between Venezuela and Great Britain.

The work of the Brussels organization, the name of which has been changed to "The International Law Association," continues. The Hague conferences seriously attacked the problem, and the famous declaration of London was one of the fruits of the world-wide effort to codify. The American Society of International Law in 1911 appointed a committee to make a draft of a code, which in the following year made a report in which it said:

> The difficulties in the way of municipal codification exist in an exaggerated form in international law, * * * a difficulty unknown to municipal codification; for the code is not the code of one nation, but of all nations if it be true to its definition and purpose,

and the committee pointed out that its task surpassed in intricacy and difficulty the preparation of a municipal code, not only because of the reasons averted to, but because there was no international court whose decisions would be a more or less authoritative guide. It was asserted in that connection that a code was not a prerequisite to a court, but that a court would through its work make easier the way to codification. An eminent American lawyer, intimately associated with the movement for the codification of international law, wrote:

> The idea of preparing a comprehensive code of international law, like the civil code of California or of Georgia, is a taking one, but very impracticable. In the first place, such a code would have to be agreed upon by the governments of the various countries which should be asked to adopt it. The process of formulation of something to be submitted to the governments necessarily would be long and troublesome. Different governments have different systems of law and different conceptions of legal principles, and the same word has a different implication in different countries. Take the word "domicile," for example. It expresses one concept in America and a very different concept in France, Germany, or any other continental country. So while theorists may write codes of international law, interesting to read and helpful in the study of the subject, such as the codes of Field, Bluntschli, Fiori, and others, no general code of international law ever has been agreed upon by two or more countries officially; nor probably ever will be. But there are many subjects susceptible of international agreement, if carefully prepared by competent scholars and submitted to the approval of, possibly an international conference, or possibly the different foreign offices, for final adoption by the legislative branches of the government of the various states. The process is bound to be a long one. In the meantime, however, rules of international law are being agreed upon by treaties, a large number of which have been negotiated by the various bodies operating under the League of Nations, which have been ratified by many countries, and the Permanent Court of International Justice in its decisions of questions coming before it in the manner above pointed out, is also greatly aiding in the process of settling international law on many subjects.

Since 1902 efforts have been systematically made to frame a code of international law for acceptance by the American republics, and in 1906 the United States entered into a treaty providing for the appointment of a commission which reported at the fifth international conference, held at Santiago, Chile, in 1923, recommending that each nation signatory to the treaty appoint two representatives to a conference to be held in Rio Janeiro in 1925. Looking to the work of the conference so to be assembled, the American Institute of International Law, at the request of the Pan American Union, prepared 30 draft conventions, covering a wide range of subjects, for the use of the conference so to assemble.

In 23 years so much progress in this adventure has been made that a basis has been provided for the serious work of the representatives of the nations concerned.

The committee of jurists who drafted the statute of the Permanent Court of International Justice in 1920 adopted the following resolution:

> The advisory committee of jurists assembled at The Hague to prepare the constituent statute of a Permanent Court of International Justice;
>
> Convinced that the extension of the sway of justice and the development of international jurisdiction are urgently required to insure the security of states and well-being of the nations, recommend that:
>
> I. A new interstate conference, to carry on the work of the two first conferences at The Hague, should be called as soon as possible for the purpose of:
>
> 1. Reestablishing the existing rules of the law of nations, more especially and in the first place those affected by the events of the recent war;
>
> 2. Formulating and approving the modifications and additions rendered necessary or advisable by the war and by the changes in the conditions of international life following upon this great struggle;
>
> 3. Reconciling divergent opinions and bringing about a general understanding concerning the rules which have been the subject of controversy;
>
> 4. Giving special consideration to those points which are not at the present time adequately provided for, and of which a definite settlement by general agreement is required in the interests of international justice.
>
> II. That the Institute of International Law, the American Institute of International Law, the Union Juridique Internationale, the International Law Association, and the Iberian Institute of Comparative Law should be invited to adopt any method or use any system of collaboration that they may think fit with a view to the preparation of draft plans to be submitted, first to the various governments and then to the Conference, for the realization of this work.
>
> III. That the new conference should be called the conference for the advancement of international law.
>
> IV. That this conference should be followed by periodical similar Conferences, at intervals sufficiently short to enable the work undertaken to be continued, in so far as it may be incomplete, with every prospect of success.

Note that it was contemplated that a series of conferences should be held, perhaps each struggling with a particular branch of international law, submitting reports perhaps as agreement should be reached upon each to the fifty-odd nations for their consideration, implying ratification, rejection, or amendment. That committee was not deceived as to the magnitude or the difficulty of the work it proposed. In 1915 Mr. Root, who was active in procuring the adoption of the resolution referred to, if he was not its author, replying to an inquiry as to whether international law should be codified, said:

> If that means should we undertake to put the law of nations into a single body which shall be the rule and guide for international relations, I think we must answer "No; that it is impossible for the present." * * * On the other hand, codification, considered not as a result but as a process, seems to me plainly should be attempted and pressed forward and urged with all possible force.

In that connection he said further:

> The process of codification, step by step, subject by subject, point by point, must begin with the intellectual labor of private individuals, and it must be completed by the acceptance of governments.

The conference so recommended was never called, perhaps because the nations, save the United States and a few others, annually meet at Geneva as the Assembly of the League of Nations, through which they find it convenient to act, as heretofore stated, in all matters requiring attention by the whole family. Obviously it was conceived, at least by the members of the league, that the work, the initiation of which was so pressed by the committee of jurists, could most conveniently and efficiently be carried on under the auspices of the league to which those entrusted with the preparatory tasks could report annually. On September 22, 1924—and I regret that the junior Senator from Missouri [Mr. WILLIAMS] is not here to appreciate that there was not very much delay in taking up the work recommended by the Root committee—the assembly, on the proposal of the Swedish delegation, instructed the council to convene a committee of experts—

> not merely possessing individually the required qualifications but also as a body representing the main forms of civilization and the principal legal systems of the world—

Which—

committee, after eventually consulting the most authoritative organizations which have devoted themselves to the study of international law, and without trespassing in any way upon the official initiative which may have been taken by particular states, shall have the duty—

(1) To prepare a provisional list of the subjects of international law, the regulation of which by international agreement would seem to be most desirable and realizable at the present moment;

(2) After communication of the list by the secretariat to the governments of states, whether members of the league or not, for their opinion, to examine the replies received; and

(3) To report to the council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

Such a committee was appointed, including Hon. George W. Wickersham, former Attorney General of the United States. It met at The Hague in April last. Touching its work I quote from the annual report of the secretariat of the league as follows:

In conformity with the terms of reference laid down under the assembly's resolution, the jurists composing the committee endeavoured to ascertain the subjects of international law, the regulation of which by international agreements would seem to be most desirable and realizable. The subjects thus selected were then distributed for preliminary examination among a number of small subcommittees consisting of certain members of the committee. These members will submit their reports to the committee at its next session, which will be held at the end of the year or early next year. In indicating these subjects the committee had no intention of finally determining the subjects which might be communicated to the governments for the purpose of obtaining their views on them. Its sole object for the moment was to make a first preliminary examination of the ground which would have to be explored with a view to the framing of detailed proposals to be elaborated at a later date. Only after this work has been done will the committee be able to submit to the council a report on the questions which are sufficiently ripe and on the procedure which might be followed with a view when the time comes to preparing for conferences for their solution.

The special points which will be examined by the subcommittees relate to the following subjects:

1. Territorial seas.
2. Diplomatic privileges and immunities.
3. Government ships employed in commerce.
4. Extradition.
5. Injuries by a state to a national of another.
6. Procedure of international conferences.
7. Piracy.
8. Prescription as affecting international rights.
9. Exploitation of the products of the sea.
10. Extraterritorial offenses.

It will be noted that the subcommittees are not to attempt to make draft of even a chapter of a code dealing with the particular subject assigned to it, but to explore the ground to be covered, to canvass the field, to consider the nature of any controversial question that may be involved, and generally to report presumably on whether there is any reasonable probability of an agreement among the nations upon any article that might be drafted dealing with the subject. The subcommittee having reported, the full committee will approve or disapprove. If it approves it reports to the league; if the league approves it goes to the individual states; if they, fifty of them more or less, approve, a committee is then appointed to make the draft which travels the same route.

I appreciate this has been a tedious recital, but I was able in no better way to show the magnitude of the task and the difficulty of having adopted a code of international law. The first step being taken is to submit to the nations the question as to whether it is worth while to try to agree on articles of a code dealing with any of the 10 subjects listed, by no means exhaustive and not including any of the laws of war or neutrality.

It is not alone, however, until international law is codified that the postponement is urged, but until war is outlawed; that is to say, until the nations of the earth agree under no circumstances to resort to war, to be denounced as a crime against the law of nations, its condemnation to form the keystone in the arch of codification.

The right of self-defense, as I understand the proposal is to be reserved, but resistance against national aggression is not to be denominated defensive war. The plan is succinctly set forth in the resolution introduced by the senior Senator from Idaho, the chairman of the Committee on Foreign Relations, on December 20, 1922, which, omitting the introductory part, is as follows:

Resolved, That it is the view of the Senate of the United States that war between nations should be outlawed as an institution or means for the settlement of international controversies, by making it a public crime under the law of nations, and that every nation should be encouraged by solemn agreement or treaty to bind itself to indict and punish its own international war breeders or instigators and war profiteers under powers similar to those conferred upon our Congress under Article I, Section 8, of our Federal Constitution which clothes the Congress with the power "to define and punish offenses against the law of nations"; and be it

Resolved further, That a code of international law of peace based upon equality and justice between nations, amplified and expanded and adapted and brought down to date, should be created and adopted.

Second. That a judicial substitute for war should be created (or, if existing in part, adapted and adjusted) in the form or nature of an international court, modeled on our Federal Supreme Court in its jurisdiction over controversies between our sovereign States, such court to possess affirmative jurisdiction to hear and decide all purely international controversies, as defined by the code, or arising under treaties, and to have the same power for the enforcement of its decrees as our Federal Supreme Court, namely, the respect of all enlightened nations for judgments resting upon open and fair investigations and impartial decisions and the compelling power of enlightened public opinion.

It is not my purpose to enter into a discussion of the merits of this proposal. Doubtless the author will in his own good time present to the Senate how it offers a practical plan for the preservation of world peace, and is calculated more certainly to insure that consummation so devoutly to be wished, than do the institutions now functioning, nominally at least, to the same end.

For the present I content myself with pursuing the subject only far enough to stimulate reflection on the prospect of securing any such world concord as is proposed. I pause, however, to comment upon a feature of the proposal said to be modeled upon our own governmental system, the consideration of which will be helpful in the resolution of the question of the time within which the plan could be brought into effective operation—my main theme. The general plan, in the pursuit of which the resolution referred to is said to be the first step, is outlined in a declaration of principles drafted by Mr. S. O. Levinson, of Chicago, Illinois, Chairman of the American Committee for the Outlawry of War, four of which I quote, as follows:

(1) The further use of war as an institution for the settlement of international disputes shall be abolished.

(2) War between nations shall be declared to be a public crime under the law of nations, but the right of defense against actual invasion shall not be impaired.

(5) A judicial substitute for war as the method of settling international disputes shall be created (or if existing in part, adapted and adjusted), in the nature of an international court modeled on our Federal Supreme Court in its jurisdiction over controversies between our sovereign states; such court to possess affirmative jurisdiction to hear and decide all international controversies, as defined by the code or arising under treaties.

(7) War must be outlawed before the international court is given affirmative jurisdiction over the disputes of the nations, just as the power to engage in war among our states was, under Article I, Section 9, of our Constitution, given up by our states before they clothed the Supreme Court with jurisdiction over their disputes.

I call attention to the fact that in the making of our Federal Constitution the States gave up their right to make war, not because the Supreme Court was clothed with jurisdiction to hear controversies between them but because the Federal Government agreed to come to the aid of any one of them which should be attacked. Being guaranteed against invasion by either another State or a foreign power, the right to make war was surrendered and the State being powerless otherwise to obtain redress from another for a wrong done to it or conceived to have been done to it by such other, provision was necessarily made for a judicial determination of the controversy. For a wrong committed against the State by a foreign power it became entitled to appeal to the Central Government, which was required to make the cause of the injured State its own. In effect every other State agreed to come to the aid of any which should be attacked. That is exactly the principle of the much-discussed, the much-maligned Article X of the covenant. It is exactly the principle of the protocol for the pacific settlement of international disputes adopted at the Fifth Assembly of the League of Nations, October 2, 1924, which was roundly denounced by everybody connected with the outlawry of war program, because, having declared a war of aggression to be an international crime, and having required of the signatory

nations a solemn agreement not to resort to war except in resistance to acts of aggression, it further left war permissive when the nation should be acting in concert with the league to repress an aggressor state.

In the plan proposed, if I have been able to understand it at all, war is not to be tolerated even to restrain a state which, in violation of a universal covenant, invades the territory of another, the warlike state, contemptuous of its solemn treaty, to be permitted to invade and possibly subjugate one after another of its relatively defenseless neighbors. How far are we from the time when nations in numbers sufficient to make it effective will agree to any such plan; will be willing to agree to submit all controversies justiciable and nonjusticiable, legal and political, or that are now so classed, to a court, a code meanwhile having been prepared ample in its provisions to meet every situation that may arise, confident that public opinion will be sufficiently powerful to impel every state with which it may have a dispute to submit it to the court and to abide by the decision thereof? Is it not, in fact, the millenium to which such a plan looks forward?

The resolution to which reference was last made has been before the committee for three years almost to a day.

No effort has been made, so far as I have been able to learn, to get it out and on the floor for discussion or action, presumably because in the state of the public mind favorable action was hopeless. It has not been indorsed by the branch of our Government charged with the conduct of foreign affairs; and if it has been proposed by any other, either in diplomatic correspondence or in any international gathering of the responsible representatives of the nations, the information has not reached the public. It awaits indorsement by any of the great associations for the study of international law that charge themselves with the critical analysis of plans to supplant force as the common agency for the resolution of disputes between nations.

The protocol to which reference was made, as is well known, was the work largely, if not wholly, of M. Benes, of Czechoslovakia, and M. Politis, of Greece, in collaboration with Prof. James S. Shotwell.

The name of the American contributor to that historic document has not infrequently been associated with the so-called outlawry of war movement, whether accurately or not I am unable to say, but if properly so, and he ever conceived that the time had come when nations having agreed not to wage aggressive war might be trusted implicitly to observe their promise in that regard, he had either abandoned the idea or he yielded to the views of his European associates, concluding that a half loaf is better than no loaf at all. It might be said in this connection that M. Benes, Foreign Minister of Czechoslovakia, is regarded as one of the most sagacious and forward-looking statesmen of Europe and M. Politis one of its most profound and accomplished lawyers—both young men. It is no secret that the European nations demand something more than treaties without sanctions as a guaranty against invasion. France, as is well known, was not satisfied with the guaranty of Article X; she wanted an international force, organized under the League of Nations, for use to repel aggression, and was appeased only by the signing of the separate treaty (never, of course, ratified by either country) by which the United States and Great Britain agreed to come to her aid in case of invasion by Germany. The Geneva protocol, hailed with delight by France and practically all the smaller nations of Europe, failed ratification, being defeated in the English Parliament, but the Locarno treaties are based upon the same principle of mutual assistance in case of invasion.

The proposal to outlaw war is one that appeals strongly to many not confronted with responsibility for the national defense, or with the preparation of an actual, feasible plan by which it is to be made effective. It will be observed that the resolution merely announces principles, as does the declaration issued by the committee on the outlawry of war. Neither presents any matured plan applying those principles, nor has any outline even of that code of international law by which all disputes are to be settled been given to the world. It is said that piracy has been outlawed, dueling has been outlawed, private wars have been outlawed, and the question is asked, Why not war? The outlaw is one who defies the law. Charged with the commission of a crime, he resists arrest and makes war on the constituted authorities. The sheriff calls to his aid every available citizen and they all make war upon the contemnor, killing him if necessary to protect themselves in the effort to make the arrest. The pirate is an outlaw; his hand is against every man and every man's hand is against him. The police trail the duelist to prevent him from committing murder or for having tried to. The bands of mountain feudists become the enemies not alone of each other but of the state and armies march against them. It is queer that advocates of the outlawry of war should find any solecism in common resistance to armed aggression by force of arms. Whatever merit there may be in the plan which has risen to the dignity of a rival to the Permanent Court of International Justice only because the name of the distinguished Senator is associated with it, its adoption is at best to be looked for only in the dim and distant future. The friends of the outlawry of war ought to be the outstanding advocates of the World Court as the most efficient means of bringing about a system approximating that proposed by them.

Another objection to the court once stressed at popular assemblies but later fallen into desuetude and which did such yeoman service in the League of Nations contest is the alleged six votes that Great Britain has to one to the United States, now seven to Great Britain since the Irish Free State has been admitted as a member of the League. Time may have obscured to some extent recollection of the facts upon which this contention is made, justifying a review of them.

The sacrifices made in the World War by the British dominions beyond seas, enjoying a measure of self-government bordering on independence, the contributions they made to its successful issue, were of such a signal character, particularly in the case of Canada, Australia, and South Africa, that when the peace conference assembled their representatives were admitted and participated on an equality with those of the powers generally. By the covenant which became a part of the treaty they were made eligible, as was any self-governing colony or dominion, to membership in the league, and consequently to representation in the assembly. Ireland having come in later sends regularly her representatives to the annual meeting of that body, and has been accorded such a status as that she sends to our government a duly accredited minister who has been regularly received here. Canada was honored at its last session in that one of her distinguished statesmen, influential in the work of the assembly, was chosen its president. She, too, has been considering sending a diplomatic representative to Washington, and negotiations touching matters of common interest between our country and our neighbor to the north are now conducted directly between them. They are all admitted on a basis of equality by the Inter-Parliamentary Union and send their representatives to its annual gatherings.

The so-called British colonies or dominions, save Ireland, not then a member of the league, participated in the election of the judges of the Permanent Court of International Justice as it is now constituted, that is to say, they voted in the assembly. They had no vote in the council. It is proposed that the right thus to vote for judges they now possess be taken away from them, either by a reservation to the resolution pending becoming operative in that regard by the acceptance of the other nations—in effect an amendment of the statute—or by an entire reform of the system, the dissolution of the court now functioning and the establishment of an entirely new one. It is needless to say that this proposal is an assault not only upon this court but upon any international court. Let no man or woman, for that matter, say "I am for a world court, but for a world court in the selection of the judges of which Ireland shall have no voice, nor Canada, nor Australia, nor South Africa." He or she might as well say "I am against this court or any court," for it must be recognized that, having once been permitted to participate in general conferences of the nations, having enjoyed and exercised that right for over five years, having shared in the election of the judges of the Permanent Court of International Justice, they can not be shaken loose.

The 50 nations which have for the period named, without a protest from any of them, accorded the dependencies mentioned a place in the family on an equality with themselves, and who suffer the same disparity, if there be disparity as we, should we participate in an international gathering to which they are admitted, would unquestionably protest, at least no inconsiderable number would protest as they must to avoid the most flagrant inconsistency. Great Britain would not dare assent to any such suggestion. It would be impossible to organize a conference for the consideration of the subject of a substitute world court from which the several units of the British Empire would be excluded. It may have been all wrong in the first place to have admitted them to an equal place in world conferences, but right or wrong the step taken can not now be retraced. We must accept the status quo or we must keep aloof from the rest of the world in the effort by concert of action to deal with world problems.

Among other perfectly absurd suggestions advanced by those opposing adherence to the protocol, not noticed because so palpably baseless, might be included one as to which I am

constrained to say a word because, perhaps unreflectingly, some countenance was given to it by a lawyer who ought to know better; namely, that the Constitution is violated or disregarded by the course proposed, the argument being that the judicial power of the United States is limited and does not extend to the establishment of a tribunal such as the so-called World Court.

It is sufficient to say that the court is not a part of the judicial system of the United States. The authority of the Government in the premises is referable to the treaty-making power, not to the grant of authority to establish courts inferior to the Supreme Court, which contemplates domestic courts established by the sole authority of the United States. The power to join in setting up courts of arbitration for the settlement of controversies with other nations has been exercised so often that the right to do so, under and in conformity with the Constitution, is past question. No one ever thought of such a limitation on the power of the Government of the United States when, in association with the other powers, it set up the Court of International Arbitration in 1899.

There is no escaping the issue. One must make his choice between the World Court now functioning or no world court. There is no one who has given any thought to the subject who conceives or will assert as his honest belief that another and a better world court, bearing no relation whatever to the league, will be organized with the cooperation of the United States, or that such a project is, as a practical proposition, a feasibility. There are those who have no sympathy whatever with the dream of the jurists for the institution of a tribunal charged with the adjudication of controversies between nations on the basis of law. Naturally they are against the World Court, the subject of the present debate, or any world court. They possess the merit of candor and consistency. Those who profess a hope for the establishment of such an institution and yet oppose the cooperation of the United States in upholding the Permanent Court of International Justice will find it difficult to escape the conclusion that, in the last analysis, their objection to it is that it came into being on the initiative of the league, whose prestige will be enhanced by any honor the court may attain, and whose authority will be strengthened by many of the judgments it may pronounce. Dispossessing themselves of their hostility to the league, whatever merits it may possess or whatever victories for humanity it may achieve, the reasons advanced for rejecting the pending resolution will appear vain, if not puerile. Even though the league be, as it is regarded by some not wholly under the influence of party bias, a military alliance for the preservation, as to boundaries, of the status quo, why should we not, holding resolutely aloof from any such purpose, freely associate ourselves with it in any work it may undertake that would, were it otherwise initiated, claim our sympathy and enlist our cooperation. Whatever evil there may be in its organization, under its auspices 57 nations, including the dependencies, embracing all the great powers save the United States and Russia, assemble annually, many of them represented by the foremost among their statesmen, respectively. Inevitably it becomes an agency through which practically every movement of a world-wide character requiring governmental sanction and support finds expression. We can work with it in its efforts to eradicate evils and remove perils that spread like the plague regardless of national boundaries, or we can earn the scorn and contempt of the world by standing on the side lines and sneering while the other nations bend their backs to such tasks.

Our Government has just accepted the invitation of the league to participate in the preliminaries looking to a world conference on the reduction of armaments. How could it do otherwise? It could not brave outraged public opinion at home or abroad by refusing to attend. A delegation headed by a distinguished ex-member of this body, now serving in the House, by regular appointment represented the United States, upon invitation of the league, in a conference assembled at its call last summer, at which was drafted a convention for the supervision of international trade in arms and ammunition and in implements of war. This convention represents a vast amount of preliminary work performed by agencies of the league at its direction in which we had no part. As any advance in the direction of such control as the convention contemplates would be impossible without the concurrence of the United States, and we had no reason for not joining in the effort to secure it except that such effort was inaugurated by the league, we were perforce obliged to accept the invitation to participate in the conference. Our country was officially represented at another conference called by the league to frame a convention for the restriction of the growth and the regulation of the traffic in opium, which opened at Geneva on November 17, 1924, our delegates being Hon. S. G. PORTER, chairman of the Committee on Foreign Affairs in the House of Representatives; the Right Rev. Charles H. Brent, Bishop of Western New York; Dr. Rupert Blue, of the Public Health Service; Mrs. Hamilton Wright; and Mr. Edward L. Neville. Finding themselves in disagreement with the dominant sentiment of the conference, they withdrew and did not sign the convention it framed.

Our participation in these important conferences has about it a painful suggestion of compulsion, a reluctant yielding to the enlightened opinion of our own people and of the world, rather than an eager association in movements in which this nation should be a leader. Another conference staged by the league during the past year to which reference has been made laid the foundation for the progressive codification of international law, an enterprise for the promotion of peace universally commended and nowhere more generously than in the United States. Whether an invitation was extended to our Government to participate, I am unable to say, but it is not open to doubt that if the slightest intimation had been given that it would be welcomed it would have been forthcoming, seeing that the council again called upon the American bar for aid, requesting Hon. George W. Wickersham to act as a member of the committee of jurists to which the preliminary work was intrusted.

Three times now the Government of the United States has officially accepted invitations to join the league in attempting to launch world reforms, and twice it has associated itself openly with that organization to that end, action that speaks eloquently of the change in attitude of the State Department since it refused or omitted to acknowledge the receipt of letters from the secretary of the league lest by doing so its existence should be acknowledged, or even since that department was accustomed to send representatives to "follow" the proceedings of conferences and commissions in an advisory or consultative capacity, as shown by the following list:

(1) Health committee: Surg. Gen. Hugh S. Cummings.

(2) Advisory committee for traffic in opium: The Hon. STEPHEN G. PORTER, Bishop Charles H. Brent, Dr. Rupert Blue.

(3) Special advisory committee on the suppression of traffic in women and children: Miss Grace Abbott, Chief of the Children's Bureau, Department of Labor.

(4) Subcommission of health—Section for standardization of sera: Dr. George W. McCoy, Director of the Hygienic Laboratory.

(5) Advisory committee for the study of anthrax: Dr. Marion Dorset, Chief of Biochemic Division of Bureau of Animal Industry, Department of Agriculture.

(6) Temporary mixed commission on armaments: The Hon. Joseph C. Grew, 1922; the Hon. Hugh S. Gibson, 1923.

(7) Health section on mission of inquiry in the Far East: Dr. Howard F. Smith, Public Health Service, Manila.

(8) Second general conference on communications and transit and conference on customs formalities, 1923: Lewis W. Haskell, American consul at Geneva, assisted by experts; Henry Chalmers, Chief of the Bureau of Foreign Tariffs of the Bureau of Foreign and Domestic Commerce; Gilbert Hirsch, of the United States Tariff Commission; C. B. Wait, customs attaché at London; and H. I. Worley, of the United States Customs Service.

(9) Conference called by the French Government under the auspices of the League of Nations on the suppression of the circulation of and traffic in obscene publications: Mr. A. R. Magruder, secretary of the legation at Berne.

Having outgrown such childishness some would still have us withhold our support of an international court of justice, eagerly looked for and ardently advocated by American jurists and statesmen, for no other or better reason than that it is associated with the league to which it owes its origin. However disguised, every argument in opposition to the pending resolution is an appeal to what is believed to be a settled hatred of the league or fear lest its value as a political asset may be depressed. No valid objection has been raised or can be raised to the method by which the judges of the court are selected—that is, no alternative plan more likely to secure men of ability or character, men of courage and independence has been proposed; no pretence is made that a wider jurisdiction could be given the court, however desirable it may be to clothe it with compulsory power, either in respect to the institution of proceedings or the enforcement of its judgments; no restriction in its jurisdiction is proposed except in respect to advisory opinions, a procedure that experience has fully vindicated whatever misgivings may have been felt when the statute of the court was first promulgated; no reason has been advanced why the judges are not as free from influences likely to swerve them from the path of justice as would be the judges of any world court chosen under any

other plan that might be proposed and that would be accepted by nations in sufficient number to put it into effect. The United States of America ought to adhere to the protocol of signature for the Permanent Court of International Justice or cease to pretend that it has any desire even to substitute law for force in the solution of international controversies, or that it looks to the determination of any such except through war.

EXECUTIVE NOMINATIONS

The PRESIDING OFFICER. If there is no objection, the Chair, as in closed executive session, will hand down sundry minor nominations for reference to the appropriate committees.

RECESS

Mr. LENROOT. In accordance with the unanimous-consent agreement, I move that the Senate stand in recess until next Monday at 12 o'clock.

The motion was agreed to; and the Senate (at 6 o'clock p. m.), under the order previously made, took a recess, as in legislative session, until Monday, January 11, 1926, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate January 9 (legislative day of January 7), 1926

SURVEYOR OF CUSTOMS

Thomas W. Whittle, of New York, to be surveyor of customs in customs collection district No. 10, with headquarters at New York, N. Y. Reappointment.

COAST GUARD OF THE UNITED STATES

Commander (temporarily a captain) Francis S. Van Boskerck to be a captain, to rank as such from December 22, 1925, in place of Capt. Richard O. Crisp, retired.

Commander John G. Berry to be temporarily a captain, to rank as such from December 22, 1925, in place of Capt. Francis S. Van Boskerck, promoted.

Lieut. Commander (temporarily a commander) Philip H. Scott to be a commander, to rank as such from December 22, 1925, in place of Commander Francis S. Van Boskerck, promoted.

Lieut. Commander William H. Shea to be temporarily a commander, to rank as such from December 22, 1925, in place of Commander Philip H. Scott, promoted.

Lieut. (temporarily a lieutenant commander) Frederick A. Zeusler to be a lieutenant commander, to rank as such from December 22, 1925, in place of Lieut. Commander Philip H. Scott, promoted.

Lieut. Raymond T. McElligott to be temporarily a lieutenant commander, to rank as such from December 22, 1925, in place of Lieut. Commander Frederick A. Zeusler, promoted.

The above-named officers have passed the examinations required by law.

APPOINTMENT IN THE REGULAR ARMY

QUARTERMASTER CORPS

Col. B. Frank Cheatham, Quartermaster Corps, to be quartermaster general, with the rank of major general, for a period of four years from date of acceptance, with rank from January 3, 1926, vice Maj. Gen. William H. Hart, died January 2, 1926.

HOUSE OF REPRESENTATIVES

SATURDAY, *January 9, 1926*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Holy, holy, holy, Lord God Almighty, we most gratefully and humbly acknowledge Thy Providence to be as the "rock of ages," which has withstood the tests of all time. We bless Thee that the broken "rock" shows us the best way to live, namely, the way of sacrifice and service. Be pleased to direct our President and all in authority with great wisdom. Be with the entire citizenship of our country. Sustain all of us in our efforts to live in the highest loves of our being. Do Thou give wisdom and understanding to this Congress in the solution of all problems of state. Have compassion upon the poor and needy and upon those who are bearing burdens caused by others. Amen.

The Journal of the proceedings of yesterday was read and approved.

LEAVE TO FILE MINORITY VIEWS

Mr. BLANTON. Mr. Speaker, I ask unanimous consent to have until midnight to-night to file minority views on the park bill, which is to come up on Monday next. I have not been able to finish my work upon it.

The SPEAKER. The gentleman from Texas asks unanimous consent that he may be permitted to file minority views upon the bill referred to after the House shall adjourn and before midnight to-night. Is there objection?

There was no objection.

ANTONIO D. PAGUIA

Mr. JONES. Mr. Speaker, I ask unanimous consent to proceed for 10 minutes out of order.

The SPEAKER. Is there objection?

Mr. TILSON. Mr. Speaker, reserving the right to object, upon what subject?

Mr. JONES. Upon a news dispatch which appears in the Washington Post of this morning in respect to Governor General Wood and the Philippines.

The SPEAKER. Is there objection?

Mr. TILSON. It is a little unusual, but I shall make no objection to the gentleman having 10 minutes.

Mr. JONES. Mr. Speaker and gentlemen of the House, the Washington Post of this morning carries the following news item:

MANILA, January 8 (by Associated Press).—Antonio D. Paguia, a member of the Manila city council, was convicted to-day in the municipal court and sentenced to two months' imprisonment on the charge of having used insolent language toward Gov. Gen. Leonard Wood in speeches in the political campaign last June. Paguia appealed to the higher court.

In view of the political campaigns in this country it is somewhat unusual that a man, simply because he used some language that was not altogether pleasing to the Governor General of the islands, should be thus imprisoned for a period of two months. I shall read now in that connection what the news item says was the language used by the gentleman who has been convicted and sentenced to two months' imprisonment:

The complaint asserted that Paguia, speaking in Tagalog dialect, had described Wood as "a big tree without a shadow." He also called Wood a despoiler of Filipino liberty, an oppressor and autocrat.

Mr. CHINDBLOM. Mr. Speaker, will the gentleman yield?

Mr. JONES. In just a moment.

I remember in 1920 the present Governor General of the islands was a candidate for the Republican nomination for Presidency of the United States. George Rothwell Brown, says in the morning Post, that at that time the general would have considered the charge that he was "a big tree without a shadow" a compliment. I am inclined to think that this is true, for at that time there was a $600,000 shadow following him around in the form of a cake of Ivory soap.

Mr. CHINDBLOM. Mr. Speaker, will the gentleman yield? Has the gentleman any information of the nature of the offense, and of the trial except what he read in the papers?

Mr. JONES. Absolutely not. I stated at the beginning—as the item is carried by the Associated Press, I assume that it is authentic.

Mr. CHINDBLOM. I do not assume that the gentleman has——

Mr. JONES. I do not yield to the gentleman. I so stated at the beginning, and I am speaking on this report from the Washington Post, which is the hand organ of the administration. I also noted its publication in the New York World.

Mr. BACON. Mr. Speaker, if the gentleman will permit, I happened to be in Manila in the past summer when that suit was being brought. The Governor General knew nothing about it at all. He did not initiate the suit, and he knew nothing of it until he read of it in the paper.

Mr. JONES. I expected that statement to be made. Of course, that all sounds very well in theory. But the facts are that the Governor General appoints the courts of first instance in the Philippines, and he is practically in control of legislation, having, as he does, the veto power. While there is an appeal to the President, there has never been a time in the history of the Philippine Islands when the President has failed to sustain the Governor General. Therefore it follows that the Governor General can secure what legislation he desires in almost every instance.

Mr. MAPES. Mr. Speaker, will the gentleman yield?

Mr. JONES. Not until I get through with this statement. Anybody with knowledge enough to come in out of the rain knows that if it had been distasteful to the Governor General they would not have convicted this poor fellow, and a single

word from the Governor General would have prevented his conviction.

There was one other thing stated. He also called Wood a despoiler of Philippine liberty, an oppressor, and an autocrat. I think if you go back into the files of the newspapers of the campaign of 1920 you will find a great deal stronger language than has been used than this in reference to various candidates who were making the campaign for the nomination for the Presidency of the United States.

Mr. BEGG. Mr. Speaker, will the gentleman yield?

Mr. JONES. I will yield in just a moment.

Mr. BEGG. I would like to have the gentleman yield; I know he is so fair.

Mr. JONES. I thank the gentleman even if he speaks in irony.

Mr. BEGG. The gentleman and I were in the Philippine Islands together, and of course he knows and I know and everybody else knows who has been there that those courts are entirely without the jurisdiction of the Governor General and entirely manned by Filipino jurists.

Mr. JONES. Oh, no—a majority of the supreme court is American, and the trial courts are appointed by the Governor General. The gentleman also knows that the Governor General of the Philippine Islands, as is manifest in every way, is practically the dictator of the policies of those islands and can get established most any kind of a policy which he desires. I am sure they would not convict any man contrary to the wishes of the Governor General, and he may pardon any man if he wishes to do so.

Mr. DYER. Mr. Speaker, will the gentleman yield?

Mr. JONES. Yes.

Mr. DYER. The Governor General appoints these judges?

Mr. JONES. Yes; I understand that the Governor General appoints the judges. Section 26 of the Philippine act provides, "The judges of the court of first instance shall be appointed by the Governor General, by and with the advice and consent of the Senate." But it is purely a technicality to say that the Philippine courts are in the hands of their own people. In the first place, they are not; and, besides, does not anybody who will think for a moment know that if they had not known that it would not displease the Governor General they would not have convicted this man?

I will tell you the trouble. We have a military man as head of the Philippine Islands, and there should not be a military man at the head of any civil government. [Applause.] Not that there is any harm in being a military man, nor any criticism to be lodged against a military man as such, but his whole life training is contrary to the instincts and to the genius of a true democracy. The Governor General vetoed 30 bills passed by the Filipino Legislature at one time. His veto is practically final, though technically not. He can veto legislation all along the line, and he practically controls the government all down through to the bottom.

The Governor General of the Philippine Islands refused to let them legislate for a long time except in accordance with his own wishes. In other words, he has heretofore refused to let them act. Now it seems he is going to refuse to let them talk; and I suppose the next thing he will do will be to refuse to let them think. Shades of the continental advocates of free speech.

Mr. KING. Mr. Speaker, will the gentleman yield?

Mr. JONES. Yes.

Mr. KING. Is it not a fact that the Governor General vetoed the bill passed by the legislature to submit the question of independence to the Legislature of the Philippine Islands?

Mr. JONES. I understand he did so. And the Governor General said out of his own mouth—I heard him make this statement—that we ought to keep the Philippine Islands as a commercial proposition and from the military viewpoint, and that we ought to say so now. I admired the general for his frankness, but I protest his policies. In other words, the Governor General of the Philippine Islands is not in sympathy with the aspirations of those people for independence, nor is he in sympathy with the desire of the people of the Philippine Islands to govern their own affairs. That is the truth about the proposition.

Back in the year 1900 the Republicans in their platform declared in reference to the Philippine Islands that the largest measure of freedom consistent with their welfare and our duty should be secured to them by law. And at the same time the commission said:

> The amplest liberty of self-government will be granted which is reconcilable with a just, stable, effective, and economical administration, and compatible with the sovereign rights and obligations of the United States.

Mr. Speaker, we are living in strange times. According to the provisions of the Constitution of the United States freedom of speech is guaranteed. This is one of the most highly prized rights of the Anglo-Saxon race. Shall we deny to those whose destinies we control the same privileges we claim for ourselves?

Mr. Speaker, according to the press reports, the statements were made in the heat of a political campaign, in which in all civilized countries broad latitude has been allowed. This gentleman is quoted as saying that General Wood is a despoiler of Filipino liberty. Do any of you honestly think he has promoted their liberties, especially when he has openly declared that he favors the retention of the islands? The accused is alleged to have said that General Wood is an autocrat. Is that such a terrible thing to say, especially in view of the circumstances and General Wood's conduct of Philippine affairs and his manifest lack of sympathy with their aspirations for independence? At any rate, if this is all that the accused said or was charged with saying and it is proper to sentence him to two months' imprisonment for using such mild language, then by all the rules of logic General Dawes should be sentenced to imprisonment for life on account of some of the things he has said about the Senate. Not a campaign has been waged in this country for 50 years in which stronger terms have not been used repeatedly.

It is well that this is so, because freedom of discussion is the finest safeguard of the liberty of any people and the suppression of free speech is the greatest weapon of any oppressor.

The SPEAKER. The time of the gentleman from Texas has expired.

Mr. JONES. May I have five minutes more? I have been interrupted a good deal.

Mr. TILSON. Mr. Speaker, we ought not to sidetrack the important business of the House to pay attention to newspaper articles. The gentleman has surely said all and more than such an article deserves. The House should go on with the appropriation bill.

INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. CRAMTON. Mr. Speaker, I move that the House do now resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the Interior Department appropriation bill, H. R. 6707.

The SPEAKER. The gentleman from Michigan moves that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the Interior Department appropriation bill. The question is on agreeing to that motion.

The motion was agreed to.

The SPEAKER. The gentleman from Ohio [Mr. BURTON] will please take the chair.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union for the further consideration of the Interior Department appropriation bill, No. 6707, with Mr. BURTON in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the further consideration of H. R. 6707, a bill making appropriations for the Department of the Interior for the fiscal year ending June 30, 1927, and for other purposes, which the Clerk will report by title.

The Clerk read the title of the bill.

The Clerk read as follows:

Bureau of Reclamation——

Mr. CRAMTON. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD by inserting a statement from the Commissioner of Indian Affairs with reference to the financial aspects of the operation of the Red Lake sawmill, about which the gentleman from Minnesota [Mr. WEFALD] asked some information.

The CHAIRMAN. The gentleman from Michigan asks unanimous consent to extend his remarks in the RECORD by inserting a letter from the Commissioner of Indian Affairs relating to the Red Lake sawmill. Is there objection?

There was no objection.

The statement referred to is as follows:

> Red Lake sawmill: In Mr. WEFALD'S letter to you of January 6 he refers principally to funds appropriated for the Red Lake sawmill. The Indian appropriation act for the fiscal year 1920 (41 Stat. L. 14) provides that "hereafter all proceeds of sales of timber products manufactured at the Red Lake Agency sawmill, or so much thereof as may be necessary, shall be available for expenses of logging, booming, towing, and manufacturing timber at said mill."
>
> Since this act became effective, up to June 30, 1925, there had been deposited in the United States Treasury from the sale of products manufactured at the Red Lake sawmill a total of $211,590.98. A part of this money has been used for the purchase of machinery and equip-

ment for the logging and manufacture of lumber, with an aggregate value of about $15,000. There was also an investment in logs on June 30, 1925, for cutting, landing, and booming of approximately $30,000. The Treasury balance on June 30, 1925, was $27,035.71, and the amount in the hands of the superintendent on that date was $1,989.55, making a total balance to the credit of this fund $29,025.26. The total receipts from July 1, 1925, to December 31, 1925, amounted to $13,911.94 plus $8,260.15 in process of deposit, or a total of $22,172.09. However, $11,940.38 has been advanced to the superintendent for current expenses, leaving a net credit of $10,231.71 to the fund on December 31, 1925. Thus the total receipts and expenditures since June 30, 1919, have been as follows:

Total deposits July 1, 1920, to June 30, 1925	$211,590.98
Total expenditures July 1, 1920, to June 30, 1925	182,565.72
Balance in fund June 30, 1925	29,025.26
Total credits June 30, 1925, to Dec. 31, 1925	22,172.09
Total withdrawals June 30, 1925, to Dec. 31, 1925	11,940.38
Balance in fund Dec. 31, 1925	10,231.71

The accumulations from June 30, 1919, to December 31, 1925, are as follows:

Net credit Dec. 31, 1925	$10,231.71
Machinery, equipment, and plant	15,000.00
Lumber on hand (approximately)	60,000.00
Logs cut 1924–25 still in lake	5,000.00
Logs cut since Nov. 1, 1925, for manufacture in 1926 (approximately)	23,000.00
Total credit for sawmill operation	113,231.71

The stock of lumber now on hand is sufficient to cover all expenditures that will need to be made for sawmill operation during the fiscal year 1926. However, the market is now dull and may remain so for many months. If the Indian Service is forced to sell all this lumber at a sacrifice, the resources of the Red Lake Indians will be reduced to a considerable extent. If the requested appropriation is granted, the service will be able to carry on operations during the summer of 1926 without forcing a sale of lumber upon a weak market, thereby conserving the tribal funds of the Indians. It should be noted that this appropriation is not from the general Chippewa fund but from funds belonging to the Red Lake Indians and derived entirely from the sale of timber from the Red Lake Indian forest. The appropriation was requested to cover an emergency. The unusual expenditures connected with the expansion of activities as authorized by the act of June 5, 1924 (43 Stat. L. 412), have made necessary this request for an additional appropriation for the fiscal year 1927.

* * * * * * *

CHAS. H. BURKE, *Commissioner.*

The Clerk read as follows:

For all expenditures authorized by the act of June 17, 1902 (32 Stat. p. 388), and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, including personal services in the District of Columbia and elsewhere; examination of estimates for appropriations in the field; refunds of overcollections hereafter received on account of water-right charges, rentals, and deposits for other purposes; printing and binding, not exceeding $30,000; purchase of rubber boots for official use by employees; employment of men with teams, automobiles, or other facilities; purchase, maintenance, and operation of horse-drawn and motor-propelled passenger-carrying vehicles; payment of damages caused to the owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, and which may be compromised by agreement between the claimant and the Secretary of the Interior, or such officers as he may designate; and payment for official telephone service in the field hereafter incurred in case of official telephones installed in private houses when authorized under regulations established by the Secretary of the Interior: *Provided*, That no part of said appropriations may be used for maintenance of headquarters for the Bureau of Reclamation outside the District of Columbia, except for the office of the Chief Engineer: *Provided further*, That the Secretary of the Interior is hereby authorized, in his discretion, until June 30, 1927, to extend the time for payment of operation and maintenance or water-rental charges due and unpaid for such period as in his judgment may be necessary. The charges so extended shall bear interest, payable annually, at the rate of 6 per cent per annum until paid. The Secretary of the Interior is also authorized, in his discretion, until June 30, 1927, to contract with any irrigation district or water users' association for the payment of the construction charges then remaining unpaid within such term of years as the Secretary may find to be necessary. The construction charges due and unpaid when such contract is executed, shall bear interest payable annually at the rate of 6 per cent per annum until paid.

Mr. SIMMONS. Mr. Chairman, I make a point of order against that part of the paragraph just read beginning with the words "*Provided further*," in line 24, on page 66, to and including line 12 on page 67, as being legislation on an appropriation bill.

Mr. CRAMTON. Will the gentleman reserve his point of order for a moment or two?

Mr. SIMMONS. Yes.

Mr. CRAMTON. Mr. Chairman, the proviso in question is of such character that I hope the gentleman from Nebraska [Mr. SIMMONS] will not feel he is obliged to insist upon it. If he does feel obliged to insist upon his point of order, I shall, of course, be obliged to admit that the point of order is good.

I do not care to engage in an argument about it, but simply desire to present this for the consideration of the gentleman from Nebraska. He is familiar, as I am, with the chaotic condition of things and the desirability of having all of these controversies worked out and a firm business basis for future administration provided.

Many of these projects are negotiating with the department for new contracts covering their construction and operation and maintenance charges. The gentleman's own project, for instance, is carrying on such negotiations under the legislation contained in the deficiency act of December 5, 1924. If his project, for instance, should desire and be able to arrange to take over the operation and maintenance of the project, there is authority under that act for the Secretary to enter into a contract and take care of the situation, but if his project is not in such a situation that they can take over the operation and maintenance of the project, they can not avail themselves of that act, and, although the Secretary may recognize the need of some rearrangement of matters, his hands are tied. I believe we ought to give the administrative officials of the Government some discretion in such an important business matter as this, to the end that these matters may be properly worked out. Hence the committee has recommended this provision. It is not indefinite in extent nor is it permanent legislation. It simply provides that during the period covered by this appropriation bill, and in this particular time, the Secretary shall have authority to make this kind of a contract. It does not repeal the provision contained in the act of December 5, 1924, to which I have referred, but it does enlarge the authority in the Secretary. With that statement of the matter, I have only to say this: That the provision is subject to a point of order, I am sorry to say, and if the gentleman insists upon his point of order, then I am obliged to concede it is good.

Mr. WILLIAMSON. Will the gentleman yield?

Mr. CRAMTON. I yield to the gentleman from South Dakota.

Mr. WILLIAMSON. Has the Committee on Irrigation and Reclamation been consulted with reference to this particular provision?

Mr. CRAMTON. I can not say as to that.

Mr. WILLIAMSON. Or any of the members of that committee?

Mr. CRAMTON. I believe it has been discussed with some of the members.

Mr. SIMMONS. Mr. Chairman, no one is more anxious than I am that the reclamation problem be worked out on a businesslike basis. The people on my project have been trying to do that with the present Commissioner of Reclamation for 13 months. We are now at exactly the same point where we started. We have done everything we can do but he has done nothing.

We have in the House a Committee on Irrigation and Reclamation, made up of men who know something about the reclamation situation. There has not been held on this paragraph one word of hearings so far as I can find; no testimony has been taken and no consideration given to it by the House Legislative Committee. Therefore, I make the point of order.

Mr. CRAMTON. As I have stated, I concede the point of order is good.

The CHAIRMAN. The Chair sustains the point of order. It is not necessary to go into the reasons therefore because it is conceded the point of order is good.

The Clerk read as follows:

Orland project, California: For operation and maintenance, continuation of construction, and incidental operations, $635,000: *Provided*, That no part of this appropriation shall be available for construction of the Stony Gorge Reservoir until the water rights in Stony Creek are finally adjudicated.

Mr. CRAMTON. Mr. Chairman, I offer an amendment on the Orland project item to strike out the proviso beginning at line 5.

The CHAIRMAN. The gentleman from Michigan offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. CRAMTON: Page 70, line 5, after the figures "635,000," strike out the remainder of the paragraph.

Mr. CRAMTON. In connection with the amendment, Mr. Chairman, I offer this explanation. Part of the appropriation is to be used in beginning the construction of a reservoir at Stony Gorge in connection with the Orland project which is to store the flood waters of Stony Creek.

Litigation is in progress now for adjudication of the water rights of the water users along the stream. It occurred to me it was desirable before we spent money for the construction of the reservoir, to make sure that the project, which is going to pay for the reservoir, had rights in the water, especially as the law of California gives the lower riparian owners some rights in the flood waters as well as the normal flow of the stream. I therefore asked the Attorney General of the United States to advise me whether the issues involved in the litigation were of such character as to raise the question of the advisability of constructing the reservoir until the litigation was settled.

At the time the committee reported the bill we had not a final statement from the Attorney General, the matter being under investigation, and, in fact, not any definite, positive statement from the Interior Department.

The gentleman from California [Mr. LEA], in whose district this project is located, has been giving the matter very careful attention and has been making some investigation and has had the matter up with the Interior Department.

I have received a letter from the Attorney General, which I will insert in the RECORD, which does not very definitely pass upon my question. I will insert also a letter, with his permission, from the Secretary of the Interior to the gentleman from California [Mr. LEA], and in addition, I will insert a letter from the Commissioner of Reclamation to me to-day, which letter assures us that in the view of the department the pending water rights litigation does not put in jeopardy, to any substantial extent, the water rights of the users on the project.

If the department is willing to take that responsibility with their knowledge of the facts and on investigation, then I am satisfied, and for that reason I have offered this amendment.

The letters referred to follow:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., January 7, 1926.

United States *v.* Angle et al.

Hon. LOUIS C. CRAMTON,
Committee on Appropriations,
House of Representatives, Washington, D. C.

DEAR MR. CRAMTON: Your letter of December 5, 1925, was duly received, and delay in answering the same has been caused because of the time it has taken to make inquiries and investigation into the matters inquired about by you.

First, you state: "I would be glad to be advised as to the nature of the litigation referred to," the litigation referring to the above-entitled suit now pending in California.

In answer thereto I will state the suit was instituted by the United States in the Federal district court to protect the rights of the United States to water in the Orland reclamation project, in substance and effect is a general water adjudication proceeding and practically all of the water users on Stony Creek are parties defendant, and there are several hundreds of them. The purpose of the suit is to obtain a decree fixing the priorities and quantities of water each party is entitled to use, fixing the duty of water and the length of the irrigation season. It is expected that the rights of the United States will be found to be prior and superior to those of some of the defendants, and that by fixing the rights of all and enforcing the decree through a water master, waste over irrigation and other detrimental practices will be brought under control, so that there will be more water available to the Government from both the natural flow and flood waters for storage. The suit involves details in the adjudication of relative rights of the parties to the suit.

Second, you inquire: "Is it of such a nature as to make it desirable to withhold commencement of construction of the reservoir until such litigation is disposed of?"

In reply thereto I would suggest that the answer to this question would depend upon a consideration of the facts in the case and the law applicable thereto, and as to what the facts are, I have before me neither authentic nor dependable evidence from which I can draw correct conclusions, and this is a matter to be determined in the good judgment of your committee and Congress.

Third, you say: "It was stated before our committee by Director Mead, of the Bureau of Reclamation, that the adjudication has to do with the normal flow of the stream, and the reservoir the flood waters. On the other hand, it has been suggested to me that the adjudication does involve the flood waters, since under the laws of California flood waters are said to be subject to the same rules of adjudication as the natural flow and that riparian rights to flood waters have been upheld by the California Supreme Court."

In answer thereto I beg to advise that in general the common-law doctrine as to the right of riparian owners to the continued flow of waters practically as in a state of nature is still in force in California and that such right is there held to include not only the ordinary or natural flow but also the greatly increased periodic flow due to the annually recurring rains and the melting of snow. (Canal, etc., Co. *v.* Wilshire, 144 Calif. 68; Miller & Lux *v.* Madera Canal Co., 155 Calif. 63; Water Rights in the Western States, third edition, Wiel, p. 875, par. 347, footnote 16.)

The law of California also recognizes the right of appropriation of waters, but that as against lower riparian owners an appropriation may become valid only by prescription, grant, disclaimer, etc., and in some cases, perhaps, by estoppel. (Canal & Irrigation Co. *v.* Worswick, 187 Calif. 674.) I am not venturing an opinion as to whether in the instant case there are riparian owners with valid rights involved.

This suit, as you are aware, has not yet proceeded to a final determination in the trial court. The facts involved are varied and numerous, and, of course, in some instances conflicting testimony is given, so that I avoid expressing myself upon questions of fact, as the information relative thereto is not available at this time.

Assuring you that I desire to aid you in this matter in so far as I can, I beg to remain,

Respectfully yours,

JNO. G. SARGENT,
Attorney General.

THE SECRETARY OF THE INTERIOR,
Washington, January 8, 1926.

Hon. CLARENCE F. LEA,
House of Representatives.

MY DEAR MR. LEA: Replying to your letter of January 6, I have to advise that from the information available to this department it does not appear that the pending water-right adjudication proceeding affecting the water supply of the Orland project will place in jeopardy to any substantial extent the water rights of users on that project. This proceeding was instituted merely to determine the relative rights of the users from the stream. It is in the nature of a friendly suit, and the controversy, in so far as one exists, concerns chiefly the low-water flow of Stony Creek. Flood waters are involved only incidentally.

There is no seasonal overflow of riparian lands by flood waters of Stony Creek. The waters of this stream are confined to its channels and there are no swamp lands along its borders. For your information, the following is quoted from a telegram dated January 6, received by the Bureau of Reclamation from District Counsel Coffey and Project Superintendent Weber of that bureau, which I believe will give you full information on this point and other pertinent features of the case:

"Careful examination pleadings Orland adjudication suit on file United States court here substantiates association's recent wire to Attorney General that no claims made by defendants to flood overflow waters on riparian lands. Also that records show all riparian owners below project have either filed disclaimers or permitted Government to obtain default orders. Illustrative map showing riparian lands and owners, also copies all disclaimers and all default orders involving over 400 defendants with copies, answers showing that other riparian owners have restricted claims to quantities water reasonably necessary for specified areas or merely for stock and domestic uses will be forwarded you next Monday. There is no overflow by Stony Creek of riparian lands, even in year's maximum run-off, as banks stream confine flow to creek channel proper, in which are contained no lands susceptible irrigation. Under present cooperative plans for concluding suit project rights not jeopardized as defendants will now be limited to asserted claims as qualified by proof."

Very truly yours,

HUBERT WORK.

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, January 9, 1926.

Hon. LOUIS C. CRAMTON,
House of Representatives, United States,
Washington, D. C.

MY DEAR MR. CRAMTON: Referring to our telephonic conversation of this morning I have to advise that from the information available it does not appear that the pending water-right adjudication proceeding affecting the water supply of the Orland project will place in jeopardy to any substantial extent the water rights of users on that project. This proceeding was instituted merely to determine the relative rights of the users from the stream. It is in the nature of a friendly suit, and the controversy, in so far as one exists, concerns chiefly the low-water flow of Stony Creek. Flood waters are involved only incidentally.

There is no seasonal overflow of riparian lands by flood waters of Stony Creek. The waters of this stream are confined to its channels and there are no swamp lands along its borders. For your information, the following is quoted from a telegram dated January 6, received by the Bureau of Reclamation from District Counsel Coffey and Project Superintendent Weber of that bureau, which I believe will give you full information on this point and other pertinent features of the case:

"Careful examination pleadings Orland adjudication suit on file United States court here substantiates association's recent wire to Attorney General that no claims made by defendants to flood overflow waters on riparian lands. Also that records show all riparian owners below project have either filed disclaimers or permitted Government to obtain default orders. Illustrative map showing riparian lands and owners also copies all disclaimers and all default orders involving over 400 defendants with copies answers showing that other riparian owners have restricted claims to quantities water reasonably necessary for specified areas or merely for stock and domestic uses will be forwarded you next Monday. There is no overflow by Stony Creek of riparian lands even in years maximum run-off as banks stream confine flow to creek channel proper in which are contained no lands susceptible irrigation. Under present cooperative plans for concluding suit project rights not jeopardized as defendants will now be limited to asserted claims as qualified by proof."

Very truly yours,

ELWOOD MEAD, *Commissioner.*

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Michigan [Mr. CRAMTON].

The amendment was agreed to.

The Clerk read as follows:

Minidoka project, Idaho: For operation and maintenance, continuation of construction, and incidental operations, $2,005,000: *Provided*, That the accumulated net profits as determined by the Secretary of the Interior, arising under the project, derived from the operation of the project power plants, leasing of Government grazing and farm lands, the sale and use of town sites, and from all other sources, shall be applied by the Secretary of the Interior, so far as may be necessary, in payment of any water-right charges due the United States by any individual water user or irrigation district to whose benefit personally or in the aggregate such accumulated profits should equitably accrue in the judgment of the Secretary of the Interior, whose decision shall be conclusive. Any surplus of such accumulated net profits and future profits from such sources shall be applied as provided by Subsection I, section 4, act of December 5, 1924 (43 Stat. p. 701).

Mr. LEATHERWOOD. Mr. Chairman, I move to strike out the last word for the purpose of asking a question. I would like to inquire of the chairman of the subcommittee whether or not the sum mentioned in this paragraph is sufficient to take care of the so-called high dam at American Falls?

Mr. CRAMTON. It is the understanding that the sum provided here is sufficient to take care of the high dam, which I think is a 1,700,000 acre-feet proposition.

Mr. LEATHERWOOD. And is the legislation sufficient to authorize the continued construction and completion of the dam?

Mr. CRAMTON. Yes; no specific legislation is necessary.

The pro forma amendment was withdrawn, and the Clerk read as follows:

Huntley project, Montana: For operation and maintenance, continuation of construction, and incidental operations, $36,000: *Provided*, That not to exceed $60,000 of the unexpended balance of the appropriation of $118,000 for the fiscal year 1926, made available by the act of March 3, 1925 (43 Stat. p. 1166), shall remain available for the fiscal year 1927.

Mr. LEAVITT. Mr. Chairman, this is a project that offers some very interesting problems in connection with irrigation matters, and I ask unanimous consent to extend my remarks in the RECORD with regard to it.

The CHAIRMAN. The gentleman from Montana asks unanimous consent to extend his remarks in the RECORD in the manner indicated. Is there objection?

There was no objection.

Mr. LEAVITT. Mr. Chairman, I move to strike out the last word. With regard to this and other Montana projects, there have very recently been submitted from the Board of Adjustment and Review, provided by the Sixty-eighth Congress, reports setting forth the situation and making constructive recommendations. This project has developed an irrigated agriculture on practically all of its lands which have proven of suitable character. It is peopled by experienced water users. I bespeak for them an honest consideration by this Congress, in the light of the report of the Board of Adjustment and Review.

The Clerk read as follows:

Milk River project, Montana: For operation and maintenance, continuation of construction, and incidental operation, Malta and Chinook divisions, $72,000: *Provided*, That no part of this amount shall be available for maintenance and operation of the Malta division after December 31, 1926, unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment of construction and operation and maintenance charges by such district or districts: *Provided further*, That any moneys which may be advanced for construction and operation and maintenance of the said Malta division after December 31, 1926, or of the Glasgow division hereafter shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said funds had been specifically appropriated for said purposes.

Mr. LEAVITT. Mr. Chairman, I move to strike out the last word. There are some provisions in connection with the item appropriating for the Milk River project which may seem to the uninformed to reflect upon the good faith of the people on that project as regards their entering into a contract with the Government. The history of the situation is, however, as follows: In 1922 this Congress passed an act which authorized the Government to enter into a contract with the water users on the Milk River project, under terms which were considered just and proper by the Congress at that time. A proposed draft was prepared, and as long ago as the 20th of February, 1923, the First Assistant Secretary of the Interior approved the form of contract for the three districts forming this irrigation project. This contract was approved by the people of at least one district. Two irrigation districts were contemplated, one to comprise the land about Malta and the other the land about Glasgow. The Malta district was organized and expressed its readiness to execute the contract. At about this time some contrary suggestions were made by the newly appointed fact-finding commission, with the result that the contract has not been approved by the Secretary for purported reasons probably fully set forth in a statement of Doctor Mead, taken from the hearings held before this subcommittee of the Appropriations Committee at the beginning of this Congress:

Mr. CRAMTON. Have they completed their irrigation district? As I understand, they have completed the formation of the irrigation district and they have a contract before the department to fix the construction cost to be paid by the district and to provide for full payment of operation and maintenance charges. That is correct? The contract has not yet been agreed to?

Mr. DENT. No; the contract has not been agreed to.

Mr. CRAMTON. But they are giving signs of wanting to do business with the Government in a businesslike way.

Mr. DENT. Yes; that is correct.

Doctor MEAD. There was a proposed draft of contract considered, I think, three years ago that the Secretary has never signed, and that we do not believe should be signed, for the reason that it commits the Government to the building of the Chain of Lakes Reservoir and does not provide for joint liability in repayment of expenditures made by the Government.

Mr. CRAMTON. You have not come to agreement as to the terms, but there is a receptive attitude on their part to form a district and make a contract.

Doctor MEAD. I think the disposition is now to prefer the 5 per cent average gross crop production plan of payment to the one provided in that contract.

Mr. CRAMTON. Well, be that as it may, there is an attitude on their part to enter into a contract with the Government, although you have not come to an agreement as to terms.

Doctor MEAD. Yes.

There the matter rests even to this time, and very plainly through no fault of the people on the project.

This situation brings about a condition fully set forth in a letter written on the 2d of May, 1924, now over a year and a half ago, by President L. C. Edwards of the Malta Irrigation District to Dr. Elwood Mead, Commissioner of Reclamation. I quote it in full because the situation from the standpoint of the settlers themselves is not always understood or adequately considered in our discussion of these matters.

MALTA, MONT., *May 2, 1924.*

Hon. ELWOOD MEAD,
Commissioner of Reclamation,
Interior Department, Washington, D. C.

DEAR DOCTOR MEAD: By authority of the board of commissioners of the Malta irrigation district, I am writing you with reference to the execution of the contract between the Malta irrigation district and

the Government, covering settlement of construction and operation and maintenance charges that have accrued on the lands within said district for the construction and operation of the Milk River project.

I feel that it is necessary for the future of the Milk River country that the question of the execution of this contract be disposed of promptly, as the people of the project have for about one year relied upon the settlement obtained and evidenced by this contract, and have made all their plans accordingly, and at the present time our people are becoming totally disheartened at the rumors which are current that on account of the report of the fact finding committee the contract will not now be executed although authorized by Congress and approved by the Director of Reclamation and the Secretary of the Interior.

Although I think you are familiar with the history of the Milk River project, a brief résumé thereof may be pertinent. This project was inaugurated in the year 1902. The representatives of the Reclamation Service represented to the people on the project that the cost would not exceed $25 per acre, and they, of course, expected that it would be completed within a reasonable time. For more than 20 years the works have been under construction and are not yet nearly completed. Instead of the cost amounting to only $25 per acre, it has mounted to over $65 per acre, and it will cost from $25 to $35 per acre additional to complete the project, so that from the best information obtainable the final cost will be between $90 and $100 per acre, which is prohibitive, considering the character of the lands.

During this whole period of 20 years the lands within the project have been tied up by the uncertainty as to the charge they would finally be subject to. It has not been possible to make any sales, as the purchasers will not invest without knowing the ultimate cost. Anyone desiring to improve has been deterred from doing so because of lack of knowledge of what it would finally be necessary to pay to relieve the lands from the undetermined charges. This situation has been a blight on the Milk River district.

Two years ago the conditions became so desperate that it was thought some help must be obtained from an outside source, and the whole matter was laid before the officials of the Great Northern Railway Co. with an appeal for advice and assistance. We received most sympathetic consideration from the railroad officials, who detailed Vice President Gilman, of that company, to endeavor to work out some adjustment which the Government could consistently accept and which would enable the people to eventually work out these charges and in the meantime know exactly what they would be compelled to pay. Mr. Gilman after acquainting himself with the facts visited Washington, accompanied by representatives of the people of the district, and conferred with Mr. Arthur P. Davis, then the Director of Reclamation. In this conference a plan of settlement was developed and was worked out in detail on behalf of the people by Mr. Gilman and Mr. Davis. Months of time were spent by these gentlemen in reaching a satisfactory adjustment. It early developed that legislation would be necessary in order to accomplish the settlement desired, and which must be had if the project was to survive, and through the good offices of Senator WALSH this legislation was secured and something like one year ago a draft of contract was perfected pursuant to the terms of the legislation enacted, and this draft was approved by the Director of Reclamation and by the Secretary of the Interior and by the people of the district.

The contract made contemplated the organization of two irrigation districts under the State law—one to comprise the land about Malta and the other the land about Glasgow. The people in the Malta district immediately took necessary proceedings to organize the district, and these proceedings have been completed and the district fully organized and ready to execute the contract. February 21 Mr. Gilman wrote Governor Davis, then commissioner of reclamation, that we were ready to execute the contract, with a few minor changes which were agreeable to Governor Davis (see Davis letter to Gilman dated March 12, 1924), but Governor Davis did not wish to proceed until a report was forthcoming from the special advisers on reclamation. This report has now been made and recommends that the contract be not executed except upon certain conditions not contemplated by it, and also suggests the abandonment of the project. One of the conditions made, namely, the sale of excess holdings at an agreed price, has already been complied with. The Great Northern Railway in its negotiations from the first insisted that a large acreage should be placed under option at reasonable prices, and these options were secured and are still outstanding.

The report of this fact-finding committee has put us back where we were two years ago, and our people are again thoroughly disheartened, and the expression is common that it is futile to attempt to deal with the Government, and that it is just as well to quit now and to make no further attempts at development. I have pointed out to those thus expressing themselves that our contract was authorized by Congress and approved by the Director of Reclamation and by the Secretary of the Interior, and that I feel the good faith of the Government is pledged and that the contract will be executed notwithstanding the report of the fact-finding committee.

I am writing this letter for the purpose of presenting to you the situation as it exists, and expressing my judgment that prompt action is imperative to prevent actual demoralization in the district. As soon as it became reasonably certain that the contract will be executed, the people took heart, and much progress was made in the way of developing land and getting settlers into the district. Necessarily, this progress will not continue if there is a further period of uncertainty. I trust that your department will see the way clear to proceed with the execution of the contract along the lines of Mr. Gilman's letter to Mr. Davis of February 21, and Mr. Davis's reply of March 12.

Yours very truly,

L. C. EDWARDS,
President Malta Irrigation District.

Surely, Members of this House, the situation is plain with regard to the good faith of the people on this project. They understand the necessity and the advisability of complying with the proper requirements of the Government and are willing to pay all that they owe if they are allowed to do so under conditions which they can meet. The report of the board of adjustment and review just submitted to Congress will give further information from which proper conclusions can be reached.

The Great Northern Railroad is cooperating to bring about a more complete settlement of the project, as is shown by the following telegram I have received from E. C. Leedy, general agricultural development agent of that railroad. The telegram reads:

During past three years have located in Milk River Valley, Chinook division, total 522 people; Malta, 100; Glasgow, 10; principally families of two to six members. Hundred and twenty-five cars emigrant movables in addition to these settlers. About 100 families of beet workers were brought in last spring, considerable number of whom will become permanent settlers. About 50 families secured during 1925 for entire valley. Number was reduced on account unfavorable weather conditions during this three-year period. We moved into Cascade 25 families, and about the same number to other irrigation projects. Our future plans contemplate an aggressive campaign to secure experienced irrigation farmers for all good lands in Milk River Valley. We now have sugar-beet factory, which will add tremendously to the prestige of this district if cost water is fixed at price which settlers can afford to pay. We are confident of bringing about satisfactory settlement and development within few years. Have just located this week two experienced irrigation farmers on 320 acres irrigated land near Chinook. Good prospects for this year.

A beet-sugar factory at Chinook was opened for the first time this fall and gives added assurance of the success of the project. Three thousand acres were cultivated to beets this past year, and 28,850 tons of beets were produced. Nearly 3,000 tons of sugar were refined. The sugar people have already in view sufficient acreage to estimate double that acreage and much more than double the production next year. Under all of these circumstances, and with the good faith of the people indicated, I bespeak for the water users a demonstration of equal good faith on the part of the Government in the terms of contracts proposed, and venture to express the most sincere hope that the delay in the future in consummating these matters shall not rest on the Federal Government, as it has to a great extent in the past.

Mr. Chairman, I withdraw my pro forma amendment, which was made merely to gain the floor.

The Clerk read as follows:

Sun River project, Montana: For operation and maintenance, continuation of construction, and incidental operations, $59,000: *Provided*, That the unexpended balance of the appropriation of $611,000 for the fiscal year 1926, made available by the act of March 3, 1925 (43 Stat. p. 1167), shall remain available for the fiscal year 1927.

Mr. LEAVITT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Montana offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. LEAVITT: Page 73, line 14, after the figures "1927," strike out the semicolon, insert a colon and the following: "*Provided*, That the restrictions carried elsewhere in this act upon the use of appropriations for construction purposes upon the Sun River and certain other projects shall not be deemed to apply to the construction of the Beaver Creek Reservoir."

Mr. LEAVITT. Mr. Chairman and members of the committee, in the general debate I attempted to show that the provisions on pages 57 and 58 of this bill could not properly be made to apply to construction on this project, because the State constitution of Montana forbids the State to enter into the contract specified in the bill. The constitution of Montana,

article 13, section 1, under the heading "public indebtedness," provides:

SECTION 1. Neither the State, nor any county, city, town, municipality, nor other subdivision of the State, shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company, or corporation, except as to such ownership as may accrue to the State by operation or provision of law.

Question was raised in the debate by the gentleman from Michigan as to whether this provision of the Montana constitution does forbid the State of Montana entering into such a contract prior to the beginning of required construction on the Sun River project. In order to secure a confirmation or otherwise of my opinion expressed in debate, I sent a telegram to the chief justice of Montana.

I quoted to him the language of the bill, and I asked him is any State authority such as the governor authorized without special act of legislature to execute contract for the State with the United States whereby Montana shall assume the duty and responsibility of promoting the development and settlement of an irrigation project after completion, the securing, selecting, and financing of settlers to enable the purchase of livestock, equipment, and supplies, and improvement of the lands to render them inhabitable and productive even though a corporation duly organized for that purpose shall provide the funds necessary? That requirement is proposed in appropriation bill for Sun River construction. My understanding is that there is no authority, the State can make such contract with Government even to undertake responsibility for promoting these things, because financial responsibility is implied even if corporation is formed, and that at any rate no one is authorized to make such contract for State without special legislative act, thus delaying progress with probability of failure in legislature.

To that yesterday I received this reply from the Hon. Lew L. Callaway, chief justice of the Montana Supreme Court:

(Western Union telegram)

HELENA, MONT., *January 8, 1926.*

Hon. SCOTT LEAVITT,

House of Representatives, Washington, D. C.

Answering your telegram of today, think your opinions sound. No one now has authority to sign contract of that nature in behalf of State. In view of constitutional provisions, personally doubt power of legislature to authorize anyone to sign such contracts.

LEW L. CALLAWAY.

The provision for a contract between my State and the United States written into this appropriation bill is not permanent legislation; it will expire, of course, with the fiscal year to which it applies. On the other hand, there is the immediate necessity for construction of the storage reservoir on Beaver Creek to bring water to 30,000 more acres already under ditch, on all of which settlement has been partly made, as well as to insure a certain supply to the 13,000 acres now irrigated throughout the season.

Last year Congress provided an appropriation for the beginning of the construction of this reservoir, leaving time for working out the problems in regard to contracts for future legislation, writing in such provisions, to be sure, but not making them apply to anything except the laterals, to some 40,000 new acres to be made irrigable in the future some four years by the construction of the reservoir.

The purpose of my amendment is to again provide for the construction of the reservoir at once, and still allows time for the working out of the other further problems of construction in the form of legislation in the future.

Mr. ROMJUE. Will the gentleman yield?

Mr. LEAVITT. I will.

Mr. ROMJUE. If the Government appropriates the money, which it does, the State does not necessarily have anything to do with how it is expended.

Mr. LEAVITT. No.

Mr. ROMJUE. So the constitution of the State would not have any bearing.

Mr. LEAVITT. It would have a bearing against the State entering into a contract with the Government.

Mr. ROMJUE. They would not have the authority to do that.

Mr. LEAVITT. Under my amendment it will not be necessary for the State to enter into any contract with the Government prior to the construction of the Beaver Creek Reservoir.

Mr. ROMJUE. The State could not enter into a contract, and is it necessary for the State to enter into a contract?

Mr. LEAVITT. No; it is not under the amendment I offer at this time.

Last year when we made appropriation for the beginning of the Beaver Creek Reservoir we provided half a million dollars for it. A proviso in the bill was that there should be formed an irrigation district under the laws of Montana, which should enter into an agreement for repayment to the Government. That was the only requirement. Negotiations have been carried on in good faith to bring about a compliance with the terms of that bill. My people have formed an irrigation district under the Montana State law and they have now a proposition before the Secretary of the Interior in regard to the contract. There is no question whatever in regard to their good faith in carrying out all the provisions of the bill.

I have also, to show the entire good faith on their part, a clipping here from the Great Falls Tribune of December 29, saying that they have taken the first step toward entering into a contract for the disposal of their surplus lands, one of the things needed for the success of the project. I repeat they have shown their good faith. In this amendment I propose, therefore, that no State contracts nor other restrictions set forth on pages 67 and 68 of the bill shall now be required before beginning the Beaver Creek Dam, and I hope the amendment will be accepted by the committee.

Mr. CRAMTON. Mr. Chairman, the situation as to the Sun River project is different from the situation as to the other projects which in this bill have been surrounded with restrictions on the expenditure of money appropriated. The Owyhee and the Vale and the Baker projects in Oregon and the Kittitas in Washington are entirely new projects. The Sun River project is in part an old project and in part a new project. There is considerable area which has been developed under the old project, and there is lack of sufficient water to carry them through the growing season and make a profitable development of the project.

To take care of that situation the Beaver Creek Reservoir is proposed in so far as it relates to the whole project. I might say that if it had related only to the old project it never would have received consideration in connection with these restrictions, but the reservoir is to be constructed large enough to take care of some 50,000 or 60,000 acres of additional land. Those lands are available, adjacent, and of course it is desirable while we are constructing the reservoir, to construct it large enough to take care of those other available lands. That is practically a new project, it is such a large extension, and we desire to have that new project protected by those restrictions, and in the bill of last year the restriction was only to that part of the project.

The amendment which the gentleman from Montana [Mr. LEAVITT] offers will have the effect of permitting the construction of a reservoir which is urgently needed upon the whole project, and will not, however, permit the extension to take in the other fifty or sixty thousand acres. Before those extensions are made there would have to be compliance with the conditions here carried. Personally, I believe that the ideas which are expressed in the restrictions referred to are of importance to the old project in large degree. Our responsibility, however, does not seem to be as heavy with the old ones that have been largely developed as with the new ones, and, as the gentleman from Montana [Mr. LEAVITT] intimates, progress is already being made along lines that will give the old portion of the project the benefit of these suggestions, as well as the new. For these reasons, Mr. Chairman, the committee has no objection to the amendment of the gentleman from Montana.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Montana.

The amendment was agreed to.

The Clerk read as follows:

Lower Yellowstone project, Montana-North Dakota: For operation and maintenance, continuation of construction, and incidental operations, $72,000: *Provided*, That not to exceed $65,000 of the unexpended balance of the appropriation of $180,000 for the fiscal year 1926, made available by the act of March 3, 1925 (43 Stat. p. 1167), shall remain available for the fiscal year 1927: *Provided further*, That no part of this amount shall be available for maintenance and operation after December 31, 1926, unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment of construction and operation and maintenance charges by such district or districts.

Mr. LEAVITT. Mr. Chairman, this is another project including a number of comparatively new problems, and I ask unanimous consent to extend my remarks in the RECORD in respect to it.

The CHAIRMAN. The gentleman from Montana asks unanimous consent to extend his remarks in the RECORD to the paragraph just read. Is there objection?

There was no objection.

Mr. LEAVITT. Mr. Chairman, I move to strike out the last word in order to gain the floor for the purpose of making some observations with regard to the lower Yellowstone irrigation project, which will be of value to the House in considering this item of the appropriations bill. There is not sufficient time under the five-minute rule to discuss all of the phases which I would like to enter into. However, I have an exhibit in this case which is the best demonstration that the future of this project is secure that I could possibly present. It is sugar from the factory completed on this project in time to handle the sugar beets raised there this last season. The factory was completed and put into operation for the first time this fall, thus giving an outlet for the most valuable crop which can be produced on the irrigated lands of Montana. This year 6,700 acres of the lower Yellowstone project were planted to sugar beets and 62,000 tons of these beets went through the factory. Next year the acreage will be at least 10,000, and the production will increase in even greater percentage.

I present to you this exhibit as a guaranty of the future, as an evidence of a confidence of the great sugar company which constructed the factory, and as an argument that the Government of the United States should be willing to show the same measure of confidence and should be ready to cooperate to the fullest possible extent in working with these people to solve successfully their problems.

I was on this project last summer with two members of this subcommittee. These gentlemen will recall reference by the water users to a contract which had been negotiated and into which they were ready to enter. The delay in entering into this contract has not been the fault of the water users. A tentative draft of it was prepared in the field and was received here in Washington as long ago as February 4, 1925, almost a year ago. The Bureau of Reclamation was represented by two of its members in the conference at which this draft was prepared, so that the people had reason to believe that they were dealing directly with the bureau itself.

The matter hung in abeyance with no decision by the department here until the 23d of October, when the department decided not to approve it on grounds which seemed sufficient to them. Now, I am not questioning the possibility that a better contract might not be prepared or that some future legislation might not be passed by this Congress which will be more satisfactory to the department. I am, however, raising the question here and now that these people have been ready to negotiate with the Government and to enter into such a contract as could be approved under existing law, for at least a year, but that the negotiations were halted.

Of course the provision in this present bill that maintenance and operation money will not be available after December 31, 1926, unless a contract or contracts shall have been made with an irrigation district or districts will not go into effect until after Congress has convened again, and we will know whether failure to reach an agreement or to exercise due diligence is to be charged against these people or against the Bureau of Reclamation and the Secretary. I say this now: That I shall watch this situation very carefully and that when I return to the second session of this Congress next fall I will know personally and from my own observation exactly what the situation is. I have faith in the intention of this Congress to play fair when it is in possession of the facts, and for that reason I have raised no point of order against this provision in the bill.

These people will meet good faith with good faith. We sometimes presume to judge the good faith of the water users on these irrigation projects by whether or not they have met every detail of their agreements, either contract agreements or agreements by implication. The people on the projects have the same right to, and they do, judge the good faith of their Government by exactly the same standards. These people likewise will meet every proper obligation, and only ask that the terms of the contract to be required shall enable them to do so under conditions which they can reasonably meet.

Mr. Chairman, I withdraw my pro forma amendment.

The Clerk read as follows:

North Platte project, Nebraska-Wyoming: For operation and maintenance, continuation of construction, and incidental operations, $1,800,000: *Provided*, That no part of this amount shall be available for maintenance and operation after December 31, 1926, unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment of construction and operation and maintenance charges by such district or districts.

Mr. SIMMONS. Mr. Chairman, I make the point of order against that part of the paragraph beginning with the word "*Provided*," in line 5, page 74, down to and including the word "districts," line 12, page 74, the language being as follows:

Provided, That no part of this amount shall be available for maintenance and operation after December 31, 1926, unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment of construction and operation and maintenance charges by such district or districts.

The CHAIRMAN. The Chair would state that this presents to the Chair an embarrassing question, in view of the fact that other paragraphs have been passed in this bill to which objection might have been made that legislation was involved quite as much and even more than this; and further, that in the bill which passed last year similar provisions were included in very considerable number. The Chair would like to hear discussions, however, on this point.

Mr. SIMMONS. Mr. Chairman, it might be that legislation has been allowed to go through in parts of this bill and also in other appropriation bills, but that does not change the fixed rules of this House regarding points of order when once they are made. The fact that gentlemen who represent other districts whose projects are limited, as has been done by legislation in this bill, ought not to preclude me from insisting on the rules of the House in respect to the project in my district.

I call the attention of the Chair to page 1385 of the CONGRESSIONAL RECORD, volume 64, part 2, where a point of order was made against a provision in the District of Columbia appropriation bill. There is this coincidence, that the present chairman of the subcommittee of the Interior Department bill was chairman of the District appropriation bill, against which the point was made. The provision in that bill, to be found on page 1385 of the RECORD for January 16, 1923, was as follows:

For compensation of jurors, $10,000: *Provided*, That none of the money appropriated by this act for the payment of jurors' fees in any of the courts shall be available or used for that purpose unless the actual cost of the trial jury in each case first be ascertained and fixed by the court and taxed as part of the costs and judgment rendered therefor against the defendant in a criminal case, against whom a verdict of guilty has been rendered; nor shall any such money be available or used for that purpose until execution has been issued and a return of nulla bona thereon has been made by the proper officer. Neither shall any of the money appropriated by this act for the payment of jurors' fees be disbursed or used to pay any juror's fees whatsoever unless the actual cost of the trial jury be ascertained and fixed by the court and taxed as costs and judgment rendered therefor against the defendant where either the United States or the District of Columbia is plaintiff and the defendant is unsuccessful in the suit. However, no person shall be imprisoned because of the nonpayment of the aforementioned costs.

The CHAIRMAN. If the Chair may interrupt, there could be no possible question that that provision was subject to the point of order, but it may throw light on the discussion of the present point.

Mr. SIMMONS. Mr. Chairman, if the Chair will permit, let us make this comparison between the paragraph there and the paragraph against which the point is directed now. There the paragraph appropriated $10,000 for jurors' fees, with a condition that no part of it should be available "unless" certain specific things were done. The provision against which the point of order is made in this bill provides that no part of the appropriation for operation and maintenance after December 31, 1926, shall be available "unless" the Secretary of the Interior negotiates contracts meeting his approval with the water users for certain purposes.

Each of these two paragraphs appropriates money with a proviso that it shall not be used unless an administrative officer does certain things. There are two decisions exactly in point.

Now, with that explanation, if the Chair will permit, may I read from the argument that the present majority leader of the House [Mr. TILSON] made on that point of order, because it seems to me that everything that he said then is applicable to the present paragraph. Mr. TILSON said:

The Chair will come to the conclusion, as I have, that this is not strictly a limitation, but is legislation couched in the form of a limitation. I believe that legislating upon an appropriation bill is a bad way to legislate, and that it ought to be discouraged in every proper way. I believe further that legislation under the guise of a limitation is distinctly bad, and therefore that there should always be a strict construction of a limitation in order to be sure that it is a limitation and not legislation, though couched in the form of a limitation.

The decisions are quite uniform that where it is simply a limitation, where it simply refers to qualifications that must be possessed by the recipient or beneficiary of the appropriation, the point of order will not lie. It is also clear on the other side that where the language requires additional duties on the part of an official it is legislation and is subject to a point of order.

The CHAIRMAN. Will the gentleman permit a question?

Mr. SIMMONS. Certainly.

The CHAIRMAN. Does not the Secretary of the Interior have the right to insist on this contract or contracts without specific legislation?

Mr. SIMMONS. No, sir. If so, as Mr. TILSON asks in his argument later on, why is it here? The present law is based on the condition that the Secretary asks for here. The only thing that must be done is that a contract made with the approval of the Secretary of the Interior must be entered into. This permits him to require that on every other acre of land they must raise green cheese, if he wants to. Mr. TILSON quotes from the opinion of Mr. Speaker Cannon, involving a point of order similar to this.

Speaker Cannon says this:

If it does not change the existing law, then it is not necessary. If it does change the existing law, then it is subject to the point of order. Much has been said about limitation, and the doctrine of limitation is sustained upon the proposition under the rule that, as Congress has the power to withhold every appropriation, it may withhold the appropriation upon limitations. Now, that is correct. But there is another rule, another phase of that question. If the limitation, whether it be affirmative or negative, operates to change the law or to enact new law in effect, then it is subject to the rule that prohibits legislation upon a general appropriation bill; and the Chair, in view of the fact that the amendment would impose upon the officials new duties as to purchasing canal supplies, has no difficulty in arriving at the conclusion that the instructions are subject to the point of order for the reasons stated.

Then Mr. TILSON proceeds:

Mr. Chairman, I believe that the Chair can not find otherwise than that in the form of a limitation this language imposes new duties upon the court. It certainly makes it impossible for this sum to be disbursed, or any part of it, until the court has performed certain new duties. It would be safe to assume that these duties are new because the court is here required to perform them. If it be otherwise, this paragraph would be futile and the committee would not bring it in here, because I am sure this great committee would not propose to do a futile thing.

Mr. CRAMTON. Mr. Chairman, will the gentleman yield for a question?

Mr. SIMMONS. Yes, sir; for a question.

Mr. CRAMTON. Is the only objection which the gentleman has to the paragraph, or perhaps I should ask, is his theory as to the legislative character of the paragraph based on the theory that the words "in the form approved by the Secretary of the Interior" do give the Secretary some authority that he would not otherwise have?

Mr. SIMMONS. My objection, Mr. Chairman, to this is that it is legislation on an appropriation bill, legislation that rightly should come from the Committee on Irrigation and Reclamation if there be need for it.

Mr. CRAMTON. I will say frankly that to my own mind the only possible objection to the point of order is in those words. I think there can be an argument as to what the provision means. I think it might save time to consider an amendment.

Mr. SIMMONS. I can not yield to the gentleman further. Mr. TILSON goes further. He says:

Mr. Chairman, what is the effect of this language and of the entire proposed paragraph? It is very clear that the House has a perfect right to limit an appropriation to any particular class. Also, that it may require any qualifications on the part of the beneficiary as a prerequisite to receiving it. If the paragraph provided that each person who receives any portion of this appropriation shall be able to turn a back handspring and to read the Koran backward and forward we have, if we so desire, the right to make such a foolish requirement. This paragraph, however, does not confine itself to the qualifications of jurors or to limiting the payment of money to only those jurors having such qualifications. In effect, the court is here required to do a considerable number of important things that at the present time it is not required to do. It is evident that it is not now required to do them, because if it were there would be no excuse for bringing in this provision. Therefore, it seems to me, Mr. Chairman, that in construing this matter the Chair should take into consideration, as Mr. Speaker Cannon says, "what is the effect" of the proposed language. Considering it from this standpoint, it seems to me that the Chair will be constrained to come to the conclusion that the effect of this language and the inevitable effect will be to impose additional duties upon officials, and therefore "in effect" it changes existing law.

That same argument applies here. If it does not change existing law, why is it here? If it imposes additional duties and obligations upon the Secretary of the Interior that he does not now have, to that extent it changes existing law. And may I say right here that it has been stated on the floor and outside of it that the Secretary of the Interior is not now required by law to act unless he himself sees fit.

A letter from the Commissioner of Reclamation was inserted in the RECORD yesterday claiming that the Secretary could act or not as he wanted to under the act of December 5, 1924.

Now, Mr. TILSON goes on in this manner, and I can not bring more clearly to the attention of the Chair what I have in mind than by reading what Mr. TILSON said:

Mr. Chairman, just one additional statement which will sum up what I have said and which I believe will be helpful to the Chair, and possibly to future chairmen, in deciding questions of limitation upon an appropriation bill. The crux of the question is whether the proposed language is legislation. In determining this question the status quo, or existing law, is the starting point. What are the powers conferred or the duties imposed by existing law? This being determined, does the proposed language curtail, extend, modify, or change in any respect these powers or duties? Are new duties created or imposed by it? Are additional powers conferred by it? Are powers already granted by existing law taken away? If any one of these questions must be answered in the affirmative it follows that the proposed language is legislation, for it is only by legislation that any of these results can be accomplished. Properly applying this standard to the case now pending the Chair can not in my judgment come to any other conclusion than that the effect of the proviso in the bill is to legislate, and therefore is subject to a point of order.

The Chairman at that time was Mr. Hicks, until recently the Alien Property Custodian. I would like to read a part of his opinion in deciding that question.

The CHAIRMAN. The Chair is familiar with that decision so it is hardly necessary to read it. However, the Chair does not desire to restrict the gentleman from Nebraska and he may read what he desires.

Mr. SIMMONS. If I may, I will eliminate part of what I had intended to read. Mr. Hicks said:

Under our rules the Committee on Appropriations can consider only questions of appropriations, the subjects of legislation and authorization being confined to the jurisdiction of standing committees constituted for that very purpose and equipped with facilities to conduct investigations. Feeling that each committee should be held strictly to the consideration of its own particular work, the Chair is of the opinion that too much latitude has been given in the employment of limitations, and that the practice of resorting to this method of securing, in an indirect way, legislation on appropriation bills, has been abused and extended beyond the intention of the rule. The Chair is therefore constrained to take the view that we should restrict rather than enlarge, limit rather than expand, the powers of the Appropriations Committee in placing legislation upon appropriation bills.

Since Congress has the right to appropriate, Congress has the right to refuse to appropriate, even though the appropriation is authorized, and this may be done in two ways: First, by not appropriating for a certain purpose at all; and, second, by denying the use of a part of an appropriation for a certain purpose.

Now, he asked:

Does the language merely deny the use of the appropriation or does it go further and require the employment of red-headed men? If existing law does not authorize the employment of red-headed men or expressly prohibits the employment of red-headed men, the language clearly becomes not a limitation but becomes legislation making an appropriation for an unauthorized purpose, and in addition proposes legislation permitting the employment of red-headed men contrary to existing law.

Then he says:

In viewing propositions of a legislative character the Chair feels we should look to the substance and not to the form in which it is presented. In the case before us what does the proviso propose? Does it impose a simple restriction on the expenditure of funds? No.

And that is the case here.

Does it stipulate that the use of the funds are conditional upon the possession by the recipients of certain qualifications or distinctions? No. It goes much further, for by the use of the words "until" and "unless" in connection with certain things to be done, it implies—yes, asserts—that these activities must be undertaken before the appropriation becomes available.

And here, by the use of the word "unless," they say that certain other things must be done by the Secretary before the appropriation is available.

This is a direction to officers and imposes new duties upon them which is repugnant to our practice. By requiring the court to perform functions, which are not now required, it clearly implies a change of law, otherwise it would be futile to suggest it. This is legislation under the guise of a limitation which is contrary to our procedure.

Now he lays down this proposition:

As a general proposition the Chair feels that whenever a limitation is accompanied by the words "unless," "except," "until," "if," "however," there is ground to view the so-called limitation with suspicion, and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. By doing so, appropriation bills will be relieved of much of the legislation which is being constantly grafted upon them and a check given a practice, which seems to the Chair both unwise and in violation of the spirit as well as the substance of our rules.

Then he asks a set of questions:

Does the limitation apply solely to the appropriation under consideration?

Does it operate beyond the fiscal year for which the appropriation is made?

Is the limitation accompanied or coupled with a phrase applying to official functions, and, if so, does the phrase give affirmative directions in fact or in effect, although not in form?

Is it accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?

Does the limitation curtail or extend, modify, or alter existing powers, or duties, or terminate old or confer new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

Let us see what this proviso does. It sets aside a sum of money for several items; then it says that that part of it for operation and maintenance can not be used unless the Secretary of the Interior enters into contracts calling for an affirmative act in form to be approved by the Secretary of the Interior. There is unlimited power in that, whereas by existing law he is required to meet certain conditions and obligations which have been made with an irrigation district or irrigation districts. The act does not say who is going to sign these contracts. I would suggest this, Mr. Chairman, that on the North Platte project it calls for a form of contract with a corporation that does not now exist on the part of the water users. This calls for affirmative acts on the part of the Secretary and involves discretion and administrative duties and acts before this money is appropriated. So that clearly it is within the provisions of the rules I have laid down, and under such circumstances the then chairman, Mr. Hicks, sustained the point of order.

The CHAIRMAN. The Chair will state that the present form of this proposed section does seem to be subject to a point of order.

Mr. CRAMTON. If the Chair will permit, the gentleman from Nebraska started out with the theory that this limitation was on all fours with the District of Columbia case he cites. Starting with that assumption, he states that a point of order would lie against it; but he has entirely overlooked the very important distinction to this effect, that the limitation is in order if it relates to the expenditure of the money rather than to the discretion of the official. Now, the paragraph before us is clearly to be sustained by that principle, as being a limitation only on the expenditure of the money rather than a limitation on the authority of an official, unless it be the language which I endeavored to call to the gentleman's attention, the words "in form approved by the Secretary of the Interior." There can be some disagreement as to what those words mean, but what was in the mind of the committee was simply that a contract, as authorized by existing law and in form approved by the Secretary, who has the authority to approve it, should be a condition precedent and that the money could only be spent on the happening of that event. It has not been the intention to confer any authority upon the Secretary or to place any restriction upon the Secretary, except as to spending the money. In the course of the rather lengthy discussion of my friend from Nebraska I endeavored to suggest to him that if his opposition to the limitation was based upon those words it would be agreeable to me to eliminate the words, for, to my mind, they are not of importance, because it is not sought to give the Secretary any greater authority. And even now I would ask consent to modify the paragraph by striking out the words "in form approved by the Secretary of the Interior." I only ask that consent to save the time of a ruling by the Chair either way and a reoffering of the paragraph in that form. Would the gentleman permit that to be done? The gentleman would not waive any rights.

Mr. SIMMONS. Mr. Chairman, I must object to that change. I do not think it alters the situation a bit when once it is done.

Mr. CRAMTON. I do not think the gentleman from Nebraska understands what I am now asking. I am asking consent to offer this, and then the gentleman will have any rights reserved to make any points of order in its amended form the gentleman may desire.

The CHAIRMAN. The Clerk will read the amendment as proposed by the gentleman from Michigan.

The Clerk read as follows:

Amendment proposed by Mr. CRAMTON: Page 74, line 8, strike out "in form approved by the Secretary of the Interior."

Mr. SIMMONS. Now, Mr. Chairman, I make a point of order.

The CHAIRMAN. In order that the parliamentary situation may be cleared here, is it agreed that the form in which this paragraph has been presented shall be as suggested by the gentleman from Michigan, omitting these words?

Mr. SIMMONS. I can not agree to that, Mr. Chairman.

Mr. CRAMTON. I think the gentleman from Nebraska is willing to agree to that. The gentleman does not lose any of his rights.

Mr. SIMMONS. No, Mr. Chairman.

Mr. CRAMTON. The gentleman can reserve the right to make a point of order against it.

Mr. SIMMONS. I can not agree to that at all.

The CHAIRMAN. Then the gentleman from Nebraska insists the paragraph shall stand as it is and the gentleman insists upon his point of order?

Mr. SIMMONS. It is the proviso to which objection is made and the Chair, of course, understands the point of order is against the proviso and not the complete paragraph. Now, Mr. Chairman, let us take up the paragraph assuming that the amendment should be made.

Mr. CRAMTON. Mr. Chairman, let us make some progress. If the gentleman from Nebraska would be willing to save time by permitting this change to be made, then we can discuss it as amended. If the gentleman does not, of course, we will have to go through the machinery of a ruling by the Chair.

Mr. SIMMONS. My understanding is the Chair has already ruled the proviso is out of order.

Mr. CRAMTON. No; there has been no ruling by the Chair.

The CHAIRMAN. The Chair has not ruled that, but has pretty strongly intimated it. I think the procedure would be very much simplified if the suggested amendment of the gentleman from Michigan should be agreed to so that we may discuss the proposition with the omission of the words suggested by the gentleman from Michigan.

Mr. SIMMONS. Which is striking out the words "in form approved by the Secretary of the Interior" in line 8. That is the gentleman's proposal?

Mr. CRAMTON. Yes.

Mr. SIMMONS. I will consent to that and make a point of order against the proviso then as amended.

The CHAIRMAN. Is there objection to the elimination of those words? If not, the paragraph stands in its modified form.

There was no objection.

Mr. SIMMONS. Now, Mr. Chairman, directing my remarks against the paragraph as amended, may I call this fact to the attention of the Chair? The present law calls for the Secretary to execute certain contracts upon the request of the water users. In other words, the Secretary can not compel and can not do the things that this paragraph as it now stands calls for him to do without the consent of a third party. That is not here. The present law directs the Secretary to enter into contracts with water users' associations, and that is not here. There are a number of things that the act of December 5, 1924, calls for the Secretary to do; limitations that are placed on his power; conditions which must be written into contracts, and things of that kind which this paragraph does not include.

If the present law requires him to do this, then why is the proviso here? If he is bound to do this under the law, may I ask the Secretary why he has not acted during the 13 months since the 5th of January, 1924, when this power was given him?

Mr. Mann—and this you will find in Hinds' Precedents 3930—made a point of order against a legislative provision that was existing law, word for word, including punctuation, pro-

visos, and everything, with one exception, they had written in the word "hereafter," which was not in the existing law, and there the Chair sustained the point of order on the ground they were amending existing law.

Nobody contends that this proviso is an attempt on the part of anybody to write into this bill existing law. That is not contended. Then why the proviso? If, as Mr. TILSON said, if as Mr. Hicks said, this is the present law, then why is it here?

The Chair must take cognizance of the fact that the present law, which is the act of December 5, 1924, is a law which, typed in single space, covers some four or five pages of manuscript. Here in some six lines is what is supposed to be the present law. There is no question, I think, Mr. Chairman, if we follow the Tilson argument and the Hicks ruling, but that the paragraph now as amended is subject to the point of order.

Mr. CRAMTON. Mr. Chairman, I only have this to say as to the paragraph as it now stands. It expresses what was the intention of the committee. It does not confer any new authority upon the department or any official of it.

Mr. SIMMONS. Will the gentleman yield?

Mr. CRAMTON. In just a moment. It does not confer any new authority. It imposes no restriction upon his action. It only restricts the spending of the money until a certain event happens. If it made it any better, either before the point of order is disposed of or afterwards, to put in there "as authorized by existing law," that is agreeable to the committee.

What we want is that the project shall not continue to be operated after the first of January next unless in the meantime there is a contract for the return of the money, and we are not specifying what the contract shall be. The general provisions of law would govern that.

Mr. SIMMONS. If the Chair will bear with me, the gentleman from Michigan says the condition is that this money is not available until certain events happen. That clearly is not a limitation under the rule. It is not a limitation as to the class of qualifications with respect to the appropriation. That is the rule. It is not until the happening of an event which is bound to occur—it is the discretionary act on the part of the Secretary in carrying out a contract. Might I suggest that the Interior Department now has contracts with three out of the four divisions for which this appropriation is made and it can not apply to all of the operations and maintenance under existing law.

The CHAIRMAN. There has been a wide discrepancy in the interpretation of the so-called rule of limitation. In the opinion of the Chair there has been too great a degree of refinement in some of these rulings. It is his thought that the rule was intended to secure substantial limitations on the expenditure of money. In case an executive discretion is given by a so-called limitation it is outside of the rule and clearly would not be authorized. But if the limitation or condition provides that on the happening of certain events an appropriation shall become effective, or on compliance with certain conditions precedent in conformity with the law, it is not legislation, but a proper restriction. It does not seem to the Chair that the condition as modified makes the paragraph subject to the point of order.

Mr. SIMMONS. If the Chair will pardon me, this paragraph does not require that he enter into contracts under existing law.

The CHAIRMAN. The Chair does not agree with the gentleman; he thinks it would have been more clear if the paragraph stated that the contracts were to be made in accordance with existing law. It can not be said that the provision would be invalid because the discretion may be or may not be exercised.

The Chair is very much strengthened in the opinion because these limitations or conditions have become a part of the whole system of legislation in provisions appropriating for reclamation. Provisions similar to this have been inserted in appropriation bills without any objection whatever. We have already adopted a considerable number in this bill. The last bill had a multiplicity of provisions of a similar character. The Chair overrules the point of order.

Mr. SIMMONS. Mr. Chairman, I move to strike out that part of the paragraph beginning with the word "*Provided*," in line 5, down to the word "district," in line 12.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. SIMMONS: Page 74, line 5, at the beginning of the word "*Provided*," strike out the remainder of the paragraph.

Mr. SIMMONS. Mr. Chairman, I ask unanimous consent to proceed for 10 minutes.

The CHAIRMAN. The gentleman from Nebraska asks unanimous consent to proceed for 10 minutes. Is there objection?

Mr. CRAMTON. If the gentleman is yielded that time, will he require further time?

Mr. SIMMONS. I will try to get through in that time.

Mr. CRAMTON. With the understanding, Mr. Chairman, that the gentleman will not require longer time, I will not object.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. SIMMONS. Mr. Chairman and gentlemen of the House, you probably have sensed something of what this controvery is about, in what has been said on the point of order just overruled by the Chair. The North Platte project in Nebraska and Wyoming was one of the first reclamation projects authorized and constructed. The interstate project was the first division constructed. That division, and that division alone, is the only one that is in serious controversy with the Interior Department at the present time. There are three other divisions—the Goshen Hole, Fort Laramie division, Nebraska, and the Northport division in Nebraska that have existing contracts with the Interior Department.

Now, get in mind that there are four divisions of settlers under the North Platte project, and this provision is aimed at one of the four.

What does it do? It appropriates for the operation and maintenance of the entire system. It appropriates for the carrying of the water for all the people under that project, and then it says to these three you must force the people of the interstate division to bow down to the will of the Secretary of the Interior or we will shut off your water. Here is a club. It is a plain word, but I must use it. It is a provision to blackjack the settlers on the interstate division over the shoulders of the other three divisions to accept the dictates of the Secretary of the Interior. What does it do?

The Government of the United States now has contracts with the settlers on the Northport unit, with the settlers on the Fort Laramie unit, and with the settlers on the Goshen division, to deliver them water. Those people are keeping their contracts, and yet here is a proviso where the Congress is asked to break the contracts with those settlers, unless a fourth group of settlers come in and accept the terms and interpretations of the law as laid down by the Secretary of the Interior. Twenty or thirty per cent of the people who are on the interstate division have paid the Government every dollar that they owe under the existing contracts. They have met their obligations, and yet the Committee on Appropriations comes in and says that we are going to break the Government's contracts with those settlers who are keeping them unless the settlers who are not keeping them pay according to the interpretation of the law by the Secretary of the Interior. This is not a provision to keep water from the men who are not meeting their obligations. It is not a provision to say to the settler who is not now able to meet his contracts, it does not say, "We will not spend any more money for you; it does not pay." It is a provision that shuts off the water from every settler on 200,000 acres of land, unless the settlers on some 22,000 acres of land are forced into submission. That is what the intention of it is and that is what it does.

Mr. MURPHY. Mr. Chairman, will the gentleman yield?

Mr. SIMMONS. I can not now, as I have been cut down to 10 minutes. We have in this House a Committee on Irrigation and Reclamation for legislative purposes, a committee that is supposed to study these things. The Congress has elected them. They are men who are assumed to have—and who do have—enough intelligence and understanding of what the law is, men who are assumed to be honest enough and fair enough to the United States, and who are to protect the Government in these matters. Has that committee been asked to legislate, have they been asked to construe or consider this law? Absolutely not. There is not a word of testimony on this paragraph in the hearings. Nobody knows where the paragraph came from nor where it is going.

Mr. BEGG. Mr. Chairman, will the gentleman yield?

Mr. SIMMONS. Yes, sir.

Mr. BEGG. What method does the Government have of proceeding against a man who will not pay other than this?

Mr. SIMMONS. On the interstate division they have a right to foreclose their liens and to shut off the water at the present time against the settler who is not paying.

Mr. BEGG. If the gentleman is stating the case accurately, why do they not do that instead of punishing the people who are paying, as the gentleman says?

Mr. SIMMONS. Simply because the present law tells the Secretary to enter into new contracts to give those men who are delinquent a chance to pay up, and the Secretary of the Interior has refused to act under the present law. This is a

club held over all of the divisions on the North Platte project to force the delinquent men to meet their obligations. In other words, here are these farmers on, roughly, 200,000 acres of land, who will not get a drop of water for the season of 1927, when they are under contract with the Government to get that water, and where the Government has agreed to deliver it, and where they are meeting their obligations. This provision says to those men that unless they can go over into the interstate division and force those people to take the contract that the Secretary of the Interior writes the water shall be shut off on the whole project.

Mr. BEGG. Let me ask the gentleman another question. Suppose we refuse to appropriate the money; even then under what right can we turn off the water or refuse to turn it on to those men who have complied with their contracts?

Mr. SIMMONS. I do not think there is any right.

Mr. BEGG. Is not the Government liable for damages to the man who has met his contract?

Mr. SIMMONS. I assume so, and there are men on every part of this project who are meeting their obligations down to the last penny, but those people will be brought under the provisions of this law and deprived of water if it goes through. I have stated that we have a committee of the House to consider the question of legislation. This provision reads as follows:

Provided, That no part of this amount shall be available for maintenance and operation after December 31, 1926, unless a contract or contracts shall have been made with an irrigation district, or with irrigation districts, organized under State law, providing for payment of construction and operation and maintenance charges by such district or districts.

What does that do? With whom is the contract to be entered into? There is not one word in this provision about that. It just says that the Secretary shall enter into a contract. No second party is named; no conditions of the contract are specified.

He is not even required to contract under the limitations of the present law. What is he going to put in the contract? How much construction; how much operation and maintenance? They are not asking you to limit the contract to carry back to the Government the money appropriated by this bill. There is now pending before the Congress a report of the Secretary of the Interior asking you to set aside some of the charges that Congress now makes mandatory. That report has gone to the legislative committee of this House, and now along comes the Appropriations Committee and tells the Committee on Irrigation and Reclamation, of which the gentleman from Idaho [Mr. SMITH] is chairman, that they shall require the Secretary to enforce the payment of every dollar. That report shows that there are $227,000 charged against the people in this project for errors and mistakes of the Reclamation Service that ought not to be collected; that over $2,500,000 is a probable loss caused by the reclamation of unproductive lands. Here comes the Subcommittee of the Appropriations Committee handling this bill, without a hearing, without any investigation that the Congress has available, and asks the Congress to order those people to pay every dollar of it.

The gentleman from Ohio [Mr. MURPHY] asked me to yield to him a moment ago. I shall be very glad to yield to him now.

Mr. VAILE. Mr. Chairman, will the gentleman yield?

Mr. SIMMONS. Yes, sir.

Mr. VAILE. The gentleman from Ohio [Mr. BEGG] asked the gentleman if the settlers who had paid their share would not have a claim for damages against the Government. Where would the gentleman send them—to the Court of Claims?

Mr. SIMMONS. They would come and plead to Congress for the next 50 years probably. That is the only action they have.

Mr. VAILE. And in every case they would have to get a bill through this House by unanimous consent allowing them to go to the Court of Claims?

Mr. SIMMONS. Yes; and I assume that the gentleman from Michigan [Mr. CRAMTON] would have to give unanimous consent, which makes it decidedly doubtful if they should get it.

The CHAIRMAN. The time of the gentleman from Nebraska has expired.

Mr. CRAMTON. The gentleman from Nebraska [Mr. SIMMONS] presents his view of it. His view is entirely different from that of the Department of the Interior, the Secretary of the Interior, and the Commissioner of Reclamation. Gentlemen who are interested if they will read the statement by Doctor Mead, which I inserted in my remarks yesterday, and which appeared on page 1712 will find that there is a great deal of disagreement between the gentleman from Nebraska and Doctor Mead as to this whole situation.

Mr. SIMMONS. Mr. Chairman, will the gentleman yield?

Mr. CRAMTON. Let me make my statement; then I will yield later.

The purpose of this is not for any new legislation. It simply provides that we are willing to go ahead another year of operating this and take our chances of getting our money back; but after that year we want to serve notice now, so as not to take them by surprise a year from now, that after one more year there must be a definite business basis established. Doctor Mead says:

As far as the North Platte project is concerned, the United States has been looked upon and used as a credit agency. The arrears of payments are so large as to be a menace to its solvency. The amounts uncollected for construction and operation and maintenance assessments aggregate the huge total of $1,931,690, and the payments which became due in December, 1925, will increase this sum to more than two and one-half million dollars.

As of November 30, 1925, the amounts uncollected for the five-year period 1920–1924 were $574,251 for operation and maintenance charges and $1,254,986 for construction charges, or a total of $1,829,237.

The interstate division is the one that the United States is endeavoring to negotiate a contract with; and bear in mind one division can not hold back another. Each division must be contracted with and most of the divisions can take care of themselves.

Mr. SIMMONS. Mr. Chairman, will the gentleman yield?

Mr. CRAMTON. Yes.

Mr. SIMMONS. The language to be put into the act says no money shall be paid for operation on all four divisions. Now, you say all four divisions must comply with the law.

Mr. CRAMTON. That can be taken care of. Furthermore, Congress will be in session next December, and there is no operation on this project from December until May; and if there should arise such a situation as the gentleman speaks of, Congress can very easily take care of it next December and would do so.

Now permit me to complete what Doctor Mead says:

The interstate division, which is the one with which the United States is endeavoring to negotiate a contract, has failed to pay the United States $1,682,567 for construction charges and operation and maintenance expenses.

Relief was granted this project under the act of May 9, 1924 (43 Stat. 116), amounting to $751,044 on construction charges and $455,872 on operation and maintenance, or a total of $1,206,916, which is the largest amount of relief granted any project under that act.

Here is the trouble between the interstate division and the Government: They will make a contract if they can make the contract just as they want it. One reason why the Secretary has been reluctant to make just their kind of a contract is probably because of a provision to the effect that under certain conditions in the making of such a contract the right is given to postpone past due operation and maintenance charges and turn them into the construction account. Now, when the construction account is handled on the 5 per cent basis—that is, 5 per cent of the gross production each year—that is going to carry it on the North Platte 50 or 75 years before the construction charges are paid; and then if you will turn into the construction account the past-due maintenance charges, we extend the time for repayment of those charges from 50 to 75 years. The gentleman from Nebraska and his people ought not to expect that operation and maintenance charges should be deferred that long.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. CRAMTON. May I have two minutes more?

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CRAMPTON. He ought not to ask that the operation and maintenance charges should be deferred that long. They should be paid each year as we go along. We should not be burdened with unpaid charges of that kind. They ought not to ask that these charges which ought to be paid every year shall in some way be extended 75 years into the future. That is not fair to the Government and not fair to the reclamation fund. The department charged with the administration of the law and which is familiar with all the details recommends this paragraph. I hope the committee will sustain the provision and vote down the amendment.

As I said before, the money is available until next January, and there will be this coming summer for negotiation and Congress will be in session next winter from December to March. There is no occasion for operation on that project at

that season, and Congress will have full opportunity to take any action that may be presented, I am sure, ably by the gentleman from Nebraska. We simply serve notice on them that reclamation is finally to be put on a business basis by the Secretary of the Interior, and that they have to figure on paying the bills.

Mr. SIMMONS. Mr. Chairman, I ask unanimous consent to proceed for three minutes.

The CHAIRMAN. The gentleman from Nebraska asks unanimous consent to proceed for three minutes. Is there objection?

There was no objection.

Mr. SIMMONS. Mr. Chairman, I want to say just this: They say that we are asking that this law be interpreted as we see fit. What the people on my project ask is that the law be enforced as the Congress said it should be enforced, and my people have indicated that they are going into the courts to determine that interpretation so that there can be no question.

Now, what is this proposal? What chance have they between now and the 31st of December of this year to litigate this law, the act of December, 1924, to a conclusion? This shuts the people on the interstate division on the North Platte project out of court and denies those people their rights to appeal to the courts. If this goes through, the Government stands a beautiful chance of losing $14,000,000 on the North Platte project, for an abandoned project on which water has been *shut off is not* worth one continental red cent.

That is the proposal. The gentleman from Michigan [Mr. CRAMTON] says he is not informed as to some things. I admit that he is not. I wish that he were. He says there is no operation on this project from December to May. How about the force of employees, engineers, superintendents, people who go through year after year serving there the people on the project?

Shall we fire all of that force on the 31st of December, 1926, and try to build up a new force in May of 1927? When are we going to repair our ditch? When are we going to make improvements and replacements? Those must be made during the winter months, when the ditch is not being operated with running water. There are on this project three great storage lakes The water in those storage lakes runs into them, under the operation and maintenance forces, during the months of December, January, February, March, and April, and the surplus-water period is the time when we fill our storage lakes. They now propose to shut our headgates on the 31st of December. The lakes which store the water for those people will be shut off, and they will come in to the season of 1927 without any water.

Mr. CRAMTON. Mr. Chairman, of course, the gentleman is assuming that which I am not assuming. He is assuming that his people will not in the year to come make a contract providing for the meeting of their obligations.

Mr. SIMMONS. Mr. Chairman, I am assuming this: That Congress is not willing to break the contract of the Government with the people on that project. I am assuming that Congress is not willing to shut off and shut out of the courts of the United States the people on that project if they want to litigate this matter.

Now, reference has been made to these charges. I ask gentlemen in the House to read section (1) of the act, which provides that the Secretary of the Interior shall set over these charges, and yet he says he is not going to follow the law. This leaves the people on that project absolutely at the mercy of the Secretary of the Interior.

The CHAIRMAN. The time of the gentleman from Nebraska has expired. The question is on the adoption of the amendment proposed by the gentleman from Nebraska.

Mr. HUDSPETH. Mr. Chairman, may we have the amendment again reported?

The CHAIRMAN. Without objection, the Clerk will again report the amendment.

The amendment was again read by the Clerk.

The question was taken; and on a division (demanded by Mr. CRAMTON) there were—ayes 29, noes 29.

Mr. SIMMONS. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chair appointed as tellers the gentleman from Nebraska [Mr. SIMMONS] and the gentleman from Michigan [Mr. CRAMTON].

The committee again divided; and the tellers reported that there were—ayes 44, noes 53.

So the amendment was rejected.

Mr. SIMMONS. Mr. Chairman, in line 7, page 74, I move to strike out the figures "1926" and insert in lieu thereof "1927."

Mr. CRAMTON. Mr. Chairman, I make the point of order that the language in question would not be in order, as the bill is only for use up until June 30, 1926, and has nothing to do with the period after that.

Mr. SIMMONS. If that is true, then the paragraph is out of order.

The CHAIRMAN. The motion is to strike out the figures "1926" and insert "1927." What is the point of order made by the gentleman from Michigan?

Mr. CRAMTON. That the bill is for the fiscal year ending June 30, 1927, and the gentleman's amendment proposes to deal with something in December, 1927, which is after the period covered by the bill.

The CHAIRMAN. Does the gentleman from Nebraska desire to be heard?

Mr. SIMMONS. If the Chair pleases, the purpose of this amendment is to give my people a reasonable chance to litigate this matter in the Federal court.

The CHAIRMAN. The Chair meant on the point of order. If the gentleman from Nebraska does not desire to be heard on the point of order, the Chair sustains the point of order in view of the date being later than the time for which the appropriation is made.

Mr. SIMMONS. Mr. Chairman, I offer another amendment. I move to strike out "December 31, 1926," and insert in lieu thereof "June 30, 1927."

The CHAIRMAN. The gentleman from Nebraska offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. SIMMONS: Page 74, line 7, strike out "December 31, 1926," and insert in lieu thereof "June 30, 1927."

Mr. CRAMTON. Mr. Chairman, I make the point of order on that that the committee has just refused to take that same position. The effect of the former amendment offered by the gentleman was to make the fund available until the 30th of June, 1927. The present amendment is expressly that in terms and, as just stated, accomplishes exactly the same thing in a different way.

The CHAIRMAN. The gentleman from Nebraska moved to extend the time to December 31, 1927. To that the gentleman from Michigan raised the point of order that that would include a date after the period for which the appropriation is made. Conforming to the objection made by the gentleman from Michigan, the gentleman from Nebraska now moves that the date of June 30, 1927, which is within the time covered by the appropriation bill, be inserted. The Chair does not see how there could be objection to that, and overrules the point of order.

Mr. SIMMONS. Mr. Chairman, I shall not take additional time of the House, but this amendment will give my people upon the interstate division of the North Platte project six months additional time within which to negotiate this contract.

Mr. CRAMTON. I only want to say, Mr. Chairman, that this is identically the same thing the committee has just voted down, and I trust the committee will do so again.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nebraska [Mr. SIMMONS].

The question was taken; and on a division (demanded by Mr. SIMMONS) there were—ayes 25, noes 44.

So the amendment was rejected.

The Clerk read as follows:

Belle Fourche project, South Dakota: For acquisition of title to lands within the limits of the Belle Fourche project by purchase of prior incumbrances, including tax titles, or in any other way that may be found feasible, by the Secretary of the Interior whenever in his judgment it is necessary or advisable to do so in order to protect the investment of the United States or to secure the proper development of project lands, $65,000: *Provided*, That the Secretary of the Interior is authorized to appraise the buildings, machinery, equipment, and all other property of whatsoever nature or kind appertaining to the Belle Fourche project, and to lease or to sell the same at public or private sale, on such terms and in such manner as he may deem for the best interests of the Government, reserving the right to reject any and all bids. The proceeds from such lease or sale shall be paid into the reclamation fund.

Mr. WILLIAMSON. Mr. Chairman, to this paragraph I make the point of order that it is legislation upon an appropriation bill.

Mr. CRAMTON. Mr. Chairman, if the gentleman will reserve his point of order for a moment or two——

Mr. WILLIAMSON. Yes.

Mr. CRAMTON. There is no question about the validity of the point of order reserved by the gentleman from South Dakota. The provision does carry legislation.

The situation upon this project is critical and demands the very best efforts of the Government and the people upon the

project and all interested in a proper development to bring about better conditions. It is so critical that it appeared to the committee that even action as drastic as this proposed was desirable. The gentleman from South Dakota [Mr. WILLIAMSON] urges in his various conversations with me that it is not fair to take action as drastic as this without longer notice, and I understand that general legislation that would give the department the necessary authority to act along these lines in such cases, after it may be necessary, is likely to receive consideration and would not entirely have the opposition of the gentleman from South Dakota; but in any event I concede that the point of order is well taken.

Mr. WILLIAMSON. Mr. Chairman, I would like to say a few words with reference to the matter involved in the paragraph against which I have made a point of order. I concede that something must be done upon the Belle Fourche irrigation project in the way of permitting the Bureau of Reclamation to get possession of abandoned lands for the purpose of resettling the project. However, I have been in consultation with Commissioner Mead upon this matter. A tentative bill has already been drafted and is now in process of being perfected with a view to having it introduced in the proper way so that it may be considered by the Committee on Irrigation of Arid Lands. I have talked with the chairman of that committee, and he has promised early hearings so this matter can be disposed of in the regular way. Opportunity will be given for all interested to be heard. But for that I should have no particular objection to the first section of this paragraph; but in view of the possibility of further legislation along proper lines, and particularly in view of the last portion of the paragraph, I must insist upon my point of order.

The CHAIRMAN. The point, then, is directed toward the whole paragraph from line 12, page 79, down to and including line 2 on page 80?

Mr. WILLIAMSON. Yes, sir.

The CHAIRMAN. The Chair sustains the point of order.

Mr. CRAMTON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Michigan offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. CRAMTON: Page 79, after line 11, insert:

"Belle Fourche project, South Dakota: For operation and maintenance until December 30, 1926, $40,000."

Mr. CRAMTON. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD by inserting a memorandum from the Commissioner of Reclamation with reference to the necessary amount to carry on the project for the period named.

The CHAIRMAN. The gentleman from Michigan asks unanimous consent to extend his remarks in the RECORD in the manner indicated. Is there objection?

There was no objection.

The matter referred to follows:

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, January 7, 1926.

Memorandum for Mr. CRAMTON.

Replying to your telephone inquiry about the operation and maintenance of the Belle Fourche project for the first half of the fiscal year 1927—that is, from July 1 to December 31, 1926:

The estimated cost for the 1927 fiscal year is $65,000, which is the appropriation requested. On account of the climatic conditions and inability to do maintenance work before the requirement for water in the spring, more than one-half of the fiscal year's cost is generally incurred from July 1 to December 31. The cost during the present fiscal year from July 1 to November 30 has been $36,762, and to December 31 will probably reach $40,000.

It is recommended that $40,000 be requested for the first half of the 1927 fiscal year.

ELWOOD MEAD, *Commissioner.*

Mr. CRAMTON. Further, I want to suggest, Mr. Chairman, the committee should understand what is most to be desired is to have action, if it is going to work out this project to a successful basis. What is proposed here and what is desired is that where settlers are on a project who can not succeed or will not, for one reason or another, there ought to be some way for the Government to acquire title to the land and let somebody go on the project who can make a success of it. I had always supposed the Government had a first lien to protect its expenditures, but it develops in some of the States that they do not have the first lien, but other liens come in ahead of the Government, and if the Government desires to acquire the title in order to protect itself it has to go further and acquire these prior liens. Let us see what will happen if something like this is done. We should proceed in a businesslike way, not with too much harshness, except where it is necessary, and it will help immensely in the West if it can be understood that the Government is going to proceed in that direction when it is necessary.

The general agricultural development agent of one of the greatest railroad companies in the West wrote a letter on January 6, 1926, to the Director of Reclamation Economics, Mr. George Kreutzer, in which, referring to one of the projects in the West, he said:

I am very much in favor of the bill which provides for an appropriation of $250,000 for acquiring title to lands which are delinquent on their water charges.

If this bill is passed and improved farms in the project in question can be offered to settlers at a reasonable price and on the terms provided in this bill, we can guarantee to provide satisfactory settlers for every farm tributary to our line within one year.

This is a statement from a man in a position to know, and it illustrates some of the possibilities of what can be done if we will once get away from politics and sentiment and do business in a businesslike way.

I appreciate the interest of the gentleman from South Dakota in the welfare of his district and in this project, and I appreciate the force of the point of order which he made and the propriety of it and the necessity of not proceeding too rapidly; but I hope that the amendment in question may be adopted which gives them a year to work the thing out, and then Congress will be in session and in a year from now can do whatever is necessary.

Mr. WILLIAMSON. Will the gentleman yield?

Mr. CRAMTON. Certainly.

Mr. WILLIAMSON. I understand the amendment proposed provides for $40,000?

Mr. CRAMTON. Yes.

Mr. WILLIAMSON. Am I correct in the assumption that there is now $30,000 available from the present appropriation so that that would give a total of $70,000?

Mr. CRAMTON. It is something like that. In the letter that I have sent to the desk it is stated there is enough in the current appropriation to carry them to the 30th of June, and this $40,000 is $4,000 more than they are spending in that same period of the year.

Mr. WILLIAMSON. Mr. Chairman, I want unanimous consent to proceed on the amendment for five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. WILLIAMSON. Mr. Chairman, while I do not want to be put in the position of opposing this amendment, because I feel that it is the best that we can get at the present time, I am not in favor of the provision limiting the appropriation for the Belle Fourche project to 1926 for very much the same reason as that advanced by the gentleman from Nebraska [Mr. SIMMONS] in support of his motion to strike out the limitation to the paragraph carrying the appropriation for the North Platte project. It is evident from the vote of the House on that motion that a motion to strike out a like provision on the amendment just offered by the gentleman from Michigan [Mr. CRAMTON] would meet with a similar fate.

The reclamation project in my district is in a most critical situation. Without this amendment it can not operate next year. Those who so far have made payments and kept them up would be shut off entirely from water and have their entire investment destroyed and farms ruined. Not only that, but it would destroy the investment of the Government in the project. If the irrigation projects are to be saved they must be kept as going institutions. I agree that there must be some reform, that authority must be given to the Secretary of the Interior to get possession of abandoned lands and to settle them. We have no provision of law under which that can be done in my district, or for that matter in any other district so far as I am aware. I hope that before the end of this session some proper legislation will be passed, and that the law will be liberalized in the matter of payment, not only as to this project but as to other districts similarly situated, so that the settlers will feel that there is some chance for them to work out from under the terrible load that they are carrying.

A situation has developed upon the Belle Fourche project where the settlers can not pay the assessments. There must be a longer period in which to make the payments. New contracts must be entered into with the district along lines which will make the settlers feel that they can work out without undue hardship. Unless that is done there is little chance for this district nor for several others in the middle West to continue to exist.

Mr. SMITH. Will the gentleman yield?

Mr. WILLIAMSON. Yes; I yield.

Mr. SMITH. Will not the provisions under the act of December 25, 1924, take care of the situation?

Mr. WILLIAMSON. We can not take advantage of that law without taking over the entire operation and maintenance of the district. We have no way of financing under the conditions sought to be imposed by the Reclamation Service.

Mr. CRAMTON. Will the gentleman yield?

Mr. WILLIAMSON. Yes.

Mr. CRAMTON. The provision recommended by the committee, which has been stricken out on the point of order, would have permitted your district to be taken care of.

Mr. WILLIAMSON. I do not know as to that; I have not had time to examine it sufficiently. Certainly it is not in the form which I hope it will finally take.

Mr. SMITH. Have the settlers on the gentleman's project taken any action as to the advisability of forming an irrigation district?

Mr. WILLIAMSON. They have formed an irrigation district, but they have not been able to get a contract under the act of December 25, 1924, and that in part explains why the 1924 payments have not been made.

Mr. ARENTZ. Mr. Chairman, I move to strike out the last word for the purpose of having the matter cleared up relative to the lien the Government has on these lands. During the Sixty-seventh Congress, during which time I was a member of the Committee on Irrigation of Arid Lands, a number of Government officials connected with the Interior Department came before that committee and at that time stated that the Government did have a first lien on these lands, and further stated that in order to provide that additional loans might be made to the settlers an amendment was necessary to the present law. We have heard this morning from the chairman of this committee that in certain States possession could not be had by the Government of these lands on account of State laws.

Mr. WILLIAMSON. Mr. Chairman, will the gentleman yield?

Mr. ARENTZ. Yes.

Mr. WILLIAMSON. My understanding is that the moment a reclamation project organizes as an irrigation district and assumes responsibility for the payment of all debts and charges, the Government loses its lien against the individual tracts and must look to the irrigation districts as a whole for payment. That is the reason why the Government can not proceed in my district or any other so organized against the individual tracts.

Mr. ARENTZ. According to that, if a man wanted to borrow money from the bank, he would get a second mortgage?

Mr. WILLIAMSON. Yes; so far as any Government lien is concerned.

Mr. ARENTZ. Can he obtain money under those circumstances?

Mr. WILLIAMSON. The purpose of the settlers in organizing our project into an irrigation district was largely to enable them to secure loans on their lands, because they could not secure loans as long as the Government had liens against the individual tracts, but by making the new arrangement whereby the irrigation district as such contracted to assume all indebtedness and pay all charges, the Government liens were discharged. As a matter of fact, we were never able to get the loans anyway, but that was the purpose of entering into the contract.

Mr. ARENTZ. Mr. Chairman, it seems to me that one of the first things the Committee on the Irrigation of Arid Lands should do would be to amend the law so that the settlers on these projects, regardless of the lien to the Government, could proceed to safeguard their loans for dairy herds and things of that sort, which they can not do at the present time, according to the understanding that I have from the statement of the gentleman from South Dakota [Mr. WILLIAMSON]. It seems to me that they are laboring under a load which is too large to carry.

Mr. SMITH. The Federal farm loan act applies to loans on Federal reclamation projects, if the settlers have the proper security. Many of the settlers have second and third loans on their original obligations to the Government, if the security is good.

Mr. ARENTZ. If the gentleman will look under the list of farm loans under the Federal farm loan act, he will find that there are very few loans, if any, for a thousand dollars, because you have to send an appraiser out on the land, in some cases 50 or 100 or 200 miles to the project, and he has got to spend the day looking over the land, at the nature of the soil and its condition, and so forth. The ordinary man does not want to get a loan for six or eight or ten thousand dollars and burden himself with such a debt. If we can remedy this we should do it. I am merely bringing it to the attention of the chairman of the Committee on Irrigation of Arid Lands, so that we can do something along that line.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan.

The amendment was agreed to.

The Clerk read as follows:

Salt Lake Basin project, Utah, first division: For continued investigations, construction of Echo Reservoir and Weber-Provo Canal, operation and maintenance, and incidental operations, the unexpended balance of any appropriation available for these purposes for the fiscal year 1926 shall be available during the fiscal year 1927: *Provided*, That no part of this appropriation shall be used for construction purposes until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law, or water users' association or associations, providing for payment by the district or districts, or water users' association or associations: *Provided further*, That the operation and maintenance charges on account of land in this project shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available for such lands, and the operation and maintenance charges, if any, payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment.

Mr. LEATHERWOOD. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Mr. LEATHERWOOD offers the following amendment: Page 80, line 7, after the word "reservoir," insert a comma and the words "Utah Lake Control."

Mr. LEATHERWOOD. Mr. Chairman, the Salt Lake project as described in this paragraph consists of three divisions or units. These divisions or units were arrived at by the water storage commission of the State of Utah in conjunction with the engineers representing the Bureau of Reclamation. The first contemplates the construction of the dam at Echo, known as the Echo Reservoir. The second provides for a diversion canal to transfer surplus waters from the watershed of the Weber River into the watershed of the Provo River. The third unit contemplates taking care of Utah Lake, maintaining its level, and preventing the waterlogging of several thousand acres of land lying adjacent and contiguous to the lake. I think this amendment should be agreed to by the chairman of the subcommittee. I want to be perfectly frank and say that at the present time it is only feasible to go ahead with perhaps two of these units. Estimates have been arrived at for the construction of the dam for storage purposes at Echo Canyon. Estimates have been arrived at and as soon as contracts are signed the diversion canal may be constructed. Here is the importance of keeping the reference to the three divisions in the bill, and I want to assure the chairman of the subcommittee that there is no danger by virtue of any language that would be in the paragraph, if the amendment should be agreed to, of any money being diverted or used for any purpose not contemplated both by the Government and the people of the project.

Mr. CARTER of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. LEATHERWOOD. Yes.

Mr. CARTER of Oklahoma. What does the amendment do? Does it add another project or an investigation—another unit?

Mr. LEATHERWOOD. Let me again repeat. The Salt Lake Basin project as agreed upon both by the State and the representatives of the Reclamation Bureau consists of three divisions or units.

One division provides for the construction of a storage reservoir; another a canal to divert surplus water from the watershed of the Weber River into the watershed of the Provo River. The third controls the level of Utah Lake. The whole aim of this project is to reclaim, conserve, and distribute the surplus waters of the two basins.

Now, my only purpose in offering this amendment, gentlemen, is this: The engineers tell me that it may be feasible to construct a diversion canal and divert some of the surplus water from the Weber River Basin to the Provo River Basin before the reservoir is completed. There is no question but that when the diversion of the water from the one watershed to the other begins it will be necessary for the Government to take care of the Utah Lake situation.

Again, I want to be very frank with the gentlemen of the committee, and particularly with the chairman of the subcommittee.

The CHAIRMAN. The time of the gentleman from Utah has expired.

Mr. LEATHERWOOD. May I have two minutes more?

The CHAIRMAN. The gentleman from Utah asks unanimous consent to proceed for two minutes more. Is there objection?

There was no objection.

Mr. LEATHERWOOD. I do not anticipate that the necessity to control the lake will arise within the period covered by this appropriation. Yet by telegrams received to-day and yesterday I am informed that there is some probability that the diversion will occur from one river basin to the other, and it might be necessary to take care of them. The people may agree as to Utah Lake matters in the near future, so that construction of the third division might be commenced.

Now, there is no danger in including these suggested words. Not one dollar of the money referred to in the paragraph can be diverted from the main purpose of the project. The Reclamation Service will control the direction of this work, and it will do it in an orderly manner. We need have no fear.

Paragraphs have been read here within the last hour referring to appropriations in large sums for a project as such, when those of us who are familiar with it know that the money is to be used in several different places and for several purposes on the project. We have no fear about that and the Government need have no fear, because it will be handled and used under the supervision of the Bureau of Reclamation. For the purpose of keeping this project designated as it was intended to be by the people of the State of Utah and by the Reclamation Service the amendment should be adopted.

I may say that the bill as it is written is not accurate, because it should be first and second divisions. It refers to the reservoir and the diversion canal, the first two units.

The CHAIRMAN. The time of the gentleman from Utah has again expired.

Mr. CRAMTON. Mr. Chairman, I regret that I do not feel that I can accept the amendment. As the gentleman from Utah [Mr. LEATHERWOOD] states, it is not expected that there will be any expenditure out of this item for Utah Lake control. No consideration to Utah Lake control has been given by our committee. I do not think any consideration has been given to it by the Budget. It seems to me we should confine the appropriation to that part of the project that expects to use the money. That is all we ought to do. I hope the amendment will not prevail.

Mr. LEATHERWOOD. Mr. Chairman, will the gentleman permit me to ask him a question?

Mr. CRAMTON. Yes.

Mr. LEATHERWOOD. I want to cooperate to the fullest extent. Can the gentleman point out what danger there would be in caring for the three units of the project?

Mr. CRAMTON. Well, I will say this to begin with: When we appropriate for Utah Lake control on the face of the bill the natural assumption of everybody is that some part of the money in this appropriation is to be used for Utah Lake control. I had the idea when it was put in last year that there was to be no expenditure for Utah Lake control, and that therefore it did not make any difference; but I found later that some gentlemen did not have the same understanding of it as the gentleman from Utah has, and I fear that this year it would again be understood that, inasmuch as we provide for Utah Lake control, some of the money is to be expended on it.

Mr. LEATHERWOOD. The gentleman does not suppose that without a contract anything would be done?

Mr. CRAMTON. A year and a half would be allowed to make contracts.

Mr. TILSON. Mr. Chairman, will the gentleman yield?

Mr. CRAMTON. Yes.

Mr. TILSON. In my copy of the bill, marked in comparison with last year's bill, it is stated that this Utah Lake control was in the bill and no mention was made of investigation, but appropriation was made for the construction of these three items, Echo Lake control, Utah Lake control, and Weber-Provo control.

Mr. CRAMTON. Last year this item was presented by the gentleman from Utah [Mr. LEATHERWOOD] as he now presents it, and the amendment was accepted; but by reason of the fact that there seemed to be in some quarters the idea that the mention of the item in the bill authorized some expenditure of the money, or carried authorization with it, it seemed to me best to guard against such a misapprehension and not to put it in the bill.

Mr. LEATHERWOOD. Take, for example, some of the paragraphs that have been passed, where no reference is made to specific things. Would the gentleman think there would be no restriction on the spending of the money? Take the Minidoka project. It is highly important both to the State of Idaho and the State of Utah that that dam be constructed. It it not referred to in the paragraph. Can there be any doubt as to the authority to go ahead and construct?

Mr. CRAMTON. No. The comparison is not parallel. In that case the language is broad enough to include the construction of the dam, and it is intended that the construction of the dam should be included, and the money is there and will be expended for that purpose. In this case, if we do not put in the language suggested by the gentleman, there would be no authority to spend the money for Utah Lake control, and there would be no money here for Utah Lake control, and hence there is no need to put it in.

Mr. LEATHERWOOD. The estimate of the Budget contemplated it.

Mr. CRAMTON. I do not understand that it contemplated it for Utah Lake control. It used the language that was put in in the year before, which was intended as the gentleman and I remember.

Mr. LEATHERWOOD. The gentleman does not contend that the limitation in the paragraph as written would in any sense limit the original plan of the project or deny the existence of the three distinct units?

Mr. CRAMTON. The bill does not prevent money being appropriated at some time for the Utah Lake control, but unless we mention the Utah Lake control the money can not be used for that purpose, and I do not know of any other real reason for putting it in except to have money used for that purpose.

The CHAIRMAN. The time of the gentleman from Michigan has expired. The question is on agreeing to the amendment proposed by the gentleman from Utah.

The amendment was rejected.

The Clerk read as follows:

Shoshone project, Wyoming: For operation and maintenance, continuation of construction, and incidental operations, Frannie and Garland divisions, $128,000: *Provided*, That no part of this amount shall be available for maintenance and operation of the Frannie division after December 31, 1926, and that any moneys which may be advanced for construction and operation and maintenance of the said Frannie division after that date shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said funds had been specifically appropriated for said purposes: *Provided further*, That the Secretary of the Interior is authorized to use so much of this amount as may be necessary in investigating the feasibility of discontinuing the operation of any portion of this project and removing the water users thereon to other lands elsewhere on the project and shall report hereon to Congress as early as may be practicable: *Provided further*, That not to exceed $150,000 of the unexpended balance of the appropriation of $414,000 for the fiscal year 1926, made available by the act of March 3, 1925 (43 Stat. p. 1171), shall remain available for the fiscal year 1927.

Mr. BANKHEAD. Mr. Chairman, I move to strike out the last word. I know the committee and the gentlemen in charge of the bill are anxious to finish it as early as possible, but there are a few comments I desire to make upon the general proposition of this reclamation policy. I have purposely waited until we had concluded the reading of all these individual projects before addressing myself to the Chair.

Mr. CRAMTON. I might say that the gentleman from Wyoming [Mr. WINTER] has an amendment to offer.

Mr. BANKHEAD. Well, I might as well say what I want to say while I have the floor. The reclamation policy as provided in the act, I believe, of June, 1902, as some of my western friends will remember, was enacted solely because of the almost unanimous support of that bill by the Representatives from the South in conjunction with those gentlemen of the West who were particularly interested in this problem.

I have always felt that a properly conducted system of reclamation was a wise governmental policy; but from my studies of the operation of the present law, with the sundry amendments that have been adopted to it, it has seemed to me there were some fundamental errors in the conception and passage of that law.

I have never believed it was a sound policy of government to lend money out of the Treasury of the United States—and in an indirect way all of these reclamation funds are really withdrawn from the Treasury of the United States—to any private enterprise or quasi private enterprise without charging interest for the use of that money. The reclamation act of 1902 provided for no interest charge, so, in a measure, it was practically

a subsidy out of the Treasury of the United States for this legitimate purpose. I am not criticizing the theory of reclamation, because I believe fundamentally it is a sound proposition.

Many mistakes have been made in the administration of this law, as my friends will readily admit, and I think that all of the arguments we now hear about the failure of reclamation as a governmental policy are more largely the fault of the administrative officers here in Washington than they have been the failure of the citizens and settlers to carry out the principles and spirit of the act itself. [Applause.]

My friend from Colorado [Mr. TAYLOR] has privately pointed out to me here to-day a number of instances where the Government engineers estimated it would cost so many million dollars to erect these projects and that it would cost the settlers so many dollars per acre to put them into a state of cultivation, thereby inducing settlers to go upon these premises upon those assumptions when, as a matter of fact, after the works had been completed the original estimates as to the cost of construction were doubled or trebled or even quadrupled in many instances, and the average cost per acre for making them susceptible of cultivation was increased in the same ratio.

Mr. SMITH. Will the gentleman yield for a statement?

Mr. BANKHEAD. Yes.

Mr. SMITH. The estimates to which the gentleman refers were made from 1902 up to 1910, when labor was one-half of what it is now and when materials cost probably one-third what they cost now.

Mr. BANKHEAD. Well, regardless of the elements which may have entered into the proposition, nevertheless, the cold figures, as shown by the hearings before your committee, will show that the facts I have stated are true, and my friend must admit that.

Now, we have a great deal of confusion in this proposition.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. BANKHEAD. Mr. Chairman, I ask unanimous consent to proceed for five additional minutes.

The CHAIRMAN. The gentleman from Alabama asks unanimous consent to proceed for five additional minutes. Is there objection?

There was no objection.

Mr. BANKHEAD. Mr. Chairman, it is my candid opinion that in the long run, although you may attempt to resort to some temporary subterfuges for the relief of the settlers and although you may pass bills of one sort and another extending the time for repayment, the wise thing for the Government to do would be to admit it has made a number of blunders with reference to the feasibility of some of these projects—the settlers never can pay out—and fix the best terms possible and agree to wipe the loss off of the books as far as the Government is concerned. [Applause.] I think it is the same proposition we had involved in the construction of ships and other things, where the Government has had to recognize an inevitable loss.

But that was not mainly what I had in mind to say. Anyone who has given study to the increase of our population—its gradual and constant increase—must come to the conclusion that it is only a question of a few decades in America—although it does not now sound like a good argument, in view of the low price of farm products, but it will come sooner than some gentlemen recognize—before we have got to bring into cultivation more of the lands in the United States that are not now being cultivated. It will be necessary to put under cultivation more of the arid lands of the West and the 10,000,000 or 15,000,000 acres of overflowed and swamp land in the South and in some of the Lake States.

Now, it has been unfair to the people of the South; it has been unfair to the people in some sections in New England, and it has been inequitable to some of the States in the Lake region to have all of this money—something like $150,000,000 that has been paid indirectly out of the Treasury of the United States—go to one particular section of the country, although I am glad our western brethren have gotton the benefit of the initial experiment.

I say that the time will come in the history of our legislation—and I believe it ought to come soon—when the Committee on Irrigation and Reclamation of public lands should devote itself seriously and earnestly, and at such length as is necessary, to the proposition of working out and devising a system which will provide a national instead of a sectional policy for the reclamation of waste land. [Applause.] I believe, my friends, it has got to be worked out on the proposition of making the land itself carry the burden of the loans that are provided, so that in the long run the Treasury of the United States shall not be the loser, even of the interest upon the money that is invested to bring these lands into cultivation.

For a number of years I have had pending before that committee, of which I was formerly a member, a bill providing such a policy. It had the indorsement in principle of President Harding in a special message which he delivered to the House of Representatives. I realize the time is not now immediately ripe for the agitation of this question, because reclamation has received a pretty black eye before the country and before the Congress because of these very things I pointed out in the beginning of my remarks. But I merely rise for the purpose of asserting that, in my candid opinion, the time is now here, despite the apparent failure of the experiment in the West—and it has not proven a complete, but in some instances a partial failure—when we should understand that one of the biggest economic problems for the consideration and action of the Congress of the United States is to take up in a serious and earnest and scientific and fair way the national policy involved in the reclamation of our waste lands. [Applause.]

Mr. WINTER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Wyoming offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. WINTER: Page 82, line 17, after the figures "1927," insert a new paragraph, as follows:

"Riverton project, Wyoming: For operation and maintenance, continuation of construction, and incidental operation, $50,000."

Mr. WINTER. Mr. Chairman and gentlemen of the committee, before making a very brief statement on this amendment I want to comment for a moment and to express my agreement with much that has been said by the gentleman from Alabama [Mr. BANKHEAD]. On last Thursday, and it will be found in the RECORD at page 1670, I concluded a presentation of nearly all of the angles of the reclamation question, but unfortunately was unable to reach in my direct presentation on the floor, and it therefore had to be extended in my remarks, the proposition that we of the West to-day recognize that the word "reclamation" is broad enough and that the word and policy of the Government is intended to be broad enough to include the swamp lands, the cut-over lands, and the exhausted, abandoned farms of the East as well. We want that very clearly understood.

At the risk of taking one more moment than I would otherwise in my explanation had I reached that point, after I refer to these exhausted lands of the East in this address of last Thursday, I stated that whereas we did not need the great essential fertilizing elements of phosphate, nitrates, and potash in the West and would be the very last to need them because our soils are new, we hoped the day would come when we of the West would be able, through the development of those industries, to contribute to the rehabilitation of the East and South, particularly of those lands that have been farmed and exhausted and are now abandoned. I hope that day will come, and for your interest I happen to have in my pocket here a little specimen of what is known as volcanic rock, otherwise technically known as leucite. It is a part of a series of enormous blowouts in the State of Wyoming known as leucite and as the Leucite Hills. This specimen contains 10 per cent of potash and 10 per cent of aluminum. The United States Geological Survey has examined and reported, and therefore the information is reliable, that we have in this kind of rock in that region over 200,000,000 tons of potash which we do not need and which I hope some day we will be able to distribute and contribute to the rest of the country.

I offer this amendment for one of the reclamation projects in Wyoming which is not mentioned in this bill. We have in that State three projects—the Shoshone, the Riverton, and then we have a portion of the North Platte project. Fourteen-nineteenths of the land under the North Platte project is in the State of Nebraska and five-nineteenths is in the State of Wyoming, and outside of that portion of that project we have the Shoshone and the Riverton projects.

The Shoshone project has been developed to the extent of two divisions out of five originally engineered and estimated for that project. And by the way, the only appropriation for the Shoshone project in this bill is $128,000. At this point I want to remark, although I do not contribute it as an argument why money should be spent in Wyoming particularly, but the State of Wyoming has contributed out of her public-land receipts and mineral royalties over $26,000,000 to the reclamation fund. It is needless to say we have taken out and received back but a small portion of that amount. I make no

point of the fact that while we contribute infinitely more than any other State to this fund, I make no objection to reasonable appropriations in the other States for that reason.

The CHAIRMAN. The time of the gentleman from Wyoming has expired.

Mr. WINTER. Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The CHAIRMAN. The gentleman from Wyoming asks unanimous consent to proceed for five additional minutes. Is there objection?

There was no objection.

Mr. MADDEN. I would like to ask the gentleman if he considers the money contributed by Wyoming a Federal fund or a State fund?

Mr. WINTER. The gentleman is opening up a very large question. Very soon there will be a bill before this House——

Mr. MADDEN. I would like to have the gentleman answer the question.

Mr. WINTER. The public lands of the United States legally belong to the United States as trustee. Does that answer the gentleman's question?

Mr. MADDEN. That, of course, leads to the conclusion that the money belongs to the United States.

Mr. WINTER. I hope soon to be heard by this House on that question. I can not take the time now. I will say, however, it has been recognized as justice and equity and as an equitable principle in your leasing bill and in all other legislation that where these resources come from the Western States it is just and equitable to return to them in one form or another a very large portion of the proceeds from those States.

Mr. MADDEN. I am not making any complaint about what has been considered proper and equitable and legal; I was just wondering whether the gentleman wanted the House and the country to understand that Wyoming as a State was making this contribution; that was all.

Mr. WINTER. I think I have stated my answer to that.

Out of this enormous sum, just in passing, I mention that we have an appropriation in this bill of $128,000.

I have mentioned our portion of the North Platte project which does carry a very large amount. The Riverton project in the central part of the State is a 100,000-acre project. It is estimated to cost $100 an acre or a total of $10,000,000. There has been expended on that project through a series of years $3,500,000. They have built an enormous and a wonderful diversion dam, a great and remarkable canal to a point where now if the water is distributed from that canal it will cover 5,000 acres of the public lands or Government lands and 10,000 acres additional of privately owned lands, a total of 15,000 acres, which is contemplated to be thrown open for settlement next spring. I believe the notices have already been published. At the end of the present construction which covers 15,000 acres there is a great basin or natural reservoir which requires another dam to make it an auxiliary reservoir known as the Pilot Reservoir.

From this point on by the assistance of an electrical power plant built on the project, belonging to the project, and which furnishes all the power necessary for the drag lines for the completion of digging of ditches—all that is necessary beyond this is to extend the canal for a short distance and you come out into the open country above Wind River and secure the irrigation of 40,000 acres more instead of 15,000, and at a cost which will be about $30 per acre, whereas if the project remains at the point of completion at this time, covering only 15,000 acres, it means that the settlers will have to pay $175 per acre.

If we were to take this thing on a broad scope this amendment should be for $500,000. Last year it was for $700,000—in order that this canal might be extended that the better and nearer lands to the railroad might be brought under cultivation, and then we would have 55,000 acres instead of 15,000, reducing thereby the cost to settlers. But I have contented myself with $50,000 for the reason that the lands now available must be opened up next spring. I would not have been supported in an amendment for $450,000 or $500,000 for the reason that the department and Budget did not indorse any such appropriation this year. But they did indorse and make provision for $50,000, the amount I am asking for in this amendment. The Budget, the Secretary of the Interior, and the Commissioner of Labor said that it was necessary to appropriate it for the reasons that I have stated.

Mr. CRAMTON. Mr. Chairman, if the appropriations for reclamation projects were to be awarded on the personality, charm, and ability of gentlemen urging them, the committee could not withstand the plea of the gentleman from Wyoming, one of the most delightful and industrious and able men in the House. But he himself would not urge that that was the proper method for the House or the committee to follow.

The matter that he has touched upon—that Wyoming contributes a very large amount to the reclamation fund—is correct. Wyoming does contribute more to the reclamation fund to-day, perhaps, than all the rest put together. If the money that is in the reclamation fund should be spent in the States from which it came, we would have to again admit the force of his argument for his amendment. I am willing to concede that that matter should have some consideration in connection with cases that are somewhat near the line, but I think there should not be controlling weight given to it. It should be remembered, further, that about half of that money that comes from the oil leases immediately goes to the State of Wyoming for use on the roads, schools, and so forth. I think something like 50 per cent.

Mr. WINTER. Fifty-two and one-half per cent in the reclamation fund. The figures I gave were in the reclamation fund but not the total. The total has been over forty millions.

Mr. CRAMTON. The fact that they claim that they ought to have something out of the products of their own soil ought to be considered, but it ought not to be the controlling factor.

As to the amendment before us, I am frank to say if the gentleman had offered an amendment for $500,000 it would have more merit although I do not know that I would be willing to follow it. It would have more merit than the item of $50,000. I want to call the attention of the committee to what the $50,000 amendment is to do and why the committee has not approved it. This afternoon we have had discussion on different kinds of difficulties of irrigation projects in one stage or another. His project is at a different stage from the others.

Mr. WINTER. Will the gentleman yield?

Mr. CRAMTON. Yes.

Mr. WINTER. I do not want to be facetious, but I suggest that a splendid way to terminate and save time would be not to go into an explanation, as I presume that has been done by the department and the Budget, and perhaps the committee has had some distinct difference against them. I do know that the 15,000 acres ought to be opened up and this additional appropriation ought to be made.

Mr. CRAMTON. The department shows that there will not be any settlers on the 15,000 acres, and that is the difficulty about it.

Mr. WINTER. Certainly not, until it is opened up.

Mr. CRAMTON. Or after. The gentleman from Nebraska [Mr. SIMMONS] had a project that had been going on for years, and the people were on the project and they were in financial difficulties. That makes it hard to handle. The gentleman from South Dakota [Mr. WILLIAMSON] had a project that was started wrong, under wrong conditions, and now they are in a desperate situation, and it is much harder to handle it now than it would have been if it had been started properly before people went on. Here is what the Director of Reclamation said to our committee about this project, and I repeat that our committee has to be guided by what we think are the facts and what seems to be the wisest thing to do, and, of course, personalities can not enter into the matter.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. CRAMTON. Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. CRAMTON. I shall not take it up in the order that Doctor Mead did, but he said:

> No; I will explain about the Riverton project. This project is planned to irrigate 100,000 acres of land, to cost approximately $10,000,000, and the appropriation last year was some $790,000 for construction. When we visited it this year we found these conditions: That this project, if built, is all unimproved land; it is unsettled, undeveloped; the water right will cost $100 an acre.

That $100, of course, for the water right is in addition to the cost of the land. He continues:

> Now, below it, nearer to the river, closer to the railroad, are improved farms, houses on them, alfalfa seeded, the same kind of land, selling for $100 an acre or less, and a large number of those farms unoccupied, and they still have some 20,000 acres of land for sale at less than our water right. And we could not see, under those conditions, much prospect of settlement or development. It looked to us as if we were going ahead with a very large investment there and a very dubious prospect of getting our money back.

Improved land, nearer the railroad, is selling for less than you can buy the water right for on the Riverton project, and even with those conditions they can not get settlers upon them and keep them there. That is the reason they have not spent this year the money for construction, but they do recommend $50,000 and what are they going to do with that? Again quoting from Doctor Mead:

Operation has been confined to the main canal from the diversion dam to Pilot Butte Reservoir and the power plant, both during the last year only. Incidental to such operation some water has been furnished to a few settlers who were prepared to use it. Water will be ready for some 8,000 acres in 1926. Questionnaires sent to the owners of private lands have indicated their intention to irrigate about 1,700 acres in 1926. It is expected to throw some 1,200 acres of public land open to settlement. The total area that may be irrigated would total 2,000 acres. While an organized district embraces all project lands, it is not proposed to demand assumption of operation charges by the district, as the district, due to lack of settlement, is a skeleton organization and not fitted to assume such responsibility at this time. Early farm development will be handicapped by long hauls to the railroad and the lack of business institutions. The construction estimates for the project contain an amount of $2 per acre for operation and maintenance deficits during construction. Of the proposed appropriation of $50,000 for fiscal year 1927, for this project, $30,000 has tentatively been allotted for operation and maintenance, operation in the early part of 1927 being expected to be on a materially larger scale than in 1926.

Here is what they proposed to do: Instead of trying to develop this other part, they are going to take these privately owned lands. There is nobody on them. The owners have departed, if they ever were there, and they are scattered all over the country. They sent out a questionnaire to these landowners and said, "If the Government will furnish you water on a rental basis for the next three years for that land at a dollar an acre per year, will you come back and develop your farms?" And they received replies for about 2,000 acres out of the 15,000. About 20 settlers have agreed to come back. They are not on the land now. The proposition, boiled down, is that $30,000 of the $50,000 will be spent to furnish water for those 2,000 acres of land, which will bring back $2,000 to us and accommodate 20 settlers who are now in places where they are better off than they would be on this land. In other words, we will spend $30,000 and we will get in return $2,000 and 20 settlers scattered over that area. Those are the present-day conditions. There was another $20,000 for some little construction that I am not advised about. Legislation will be passed soon, no doubt, providing the conditions under which these projects will be developed; and it seems as if the Riverton project will be better off to mark time for a little while until there are conditions that favor some prospect of success. I hope the amendment will not prevail.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wyoming.

The amendment was rejected.

The Clerk read as follows:

Ten per cent of the foregoing amounts shall be available interchangeably for expenditures on the reclamation projects named; but not more than 10 per cent shall be added to the amount appropriated for any one of said projects, except that should existing works or the water supply for lands under cultivation be endangered by floods or other unusual conditions an amount sufficient to make necessary emergency repairs shall become available for expenditure by further transfer of appropriation from any of said projects upon approval of the Secretary of the Interior.

Mr. TILSON. Mr. Chairman, I ask unanimous consent that the word "existing" in line 19, page 83, be correctly spelled.

The CHAIRMAN. Without objection it will be so ordered.

There was no objection.

The Clerk read as follows:

Whenever, during the fiscal year ending June 30, 1927, the commission of the Bureau of Reclamation shall find that the expenses of travel, including the local transportation of employees to and from their homes to the places where they are engaged on construction or operation and maintenance work, can be reduced thereby he may authorize the payment of not to exceed 3 cents per mile for a motor cycle or 7 cents per mile for an automobile used for necessary official business.

Mr. CRAMTON. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. CRAMTON: Page 84, line 9, after the word "business," insert a period and the following: "Payments may be made of expenses of packing, crating, and transportation (including drayage) of personal effects of employees of the Reclamation Service upon permanent change of stations."

Mr. CRAMTON. Mr. Chairman, that is not new. It simply authorizes what has been done before. A similar provision was put into the Post Office and Treasury appropriation bill.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

For the share of the Government of the United States of the costs of operating and maintaining the Colorado River front work and levee system adjacent to the Yuma Federal irrigation project in Arizona and California, as authorized by the act entitled "An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved March 3, 1925 (43 Stat. p. 1186), $35,000, or so much thereof as may be necessary, to be transferred to the reclamation fund, special fund, created by the act of June 17, 1902 (32 Stat. p. 388), and to be expended under the direction of the Secretary of the Interior in accordance with the provisions applicable to appropriations made for the fiscal year 1927 from the reclamation fund.

Mr. SWING. Mr. Chairman, I move to strike out the last word. I am glad to see this paragraph in the bill, which recognizes that the United States Government has an obligation for flood control work on the Colorado River. That is one of the great rivers of the West, but it is one of the worst rivers from the standpoint of flood menace, because of the violent fluctuation in the flow of the stream, getting down as low as 2,000 second-feet and vaulting as high as 200,000 second-feet.

This paragraph provides for the Government making a contribution toward the river front control along the Yuma reclamation project. Identically the same problem confronts the Palo Verde Valley on the California side along 30 miles of river front, and again along the 20 miles of river front of the Imperial Valley, famous for its fertility but also widely known because it is below sea level and, therefore, particularly open to this flood attack.

This levee work is all right, so far as it goes, but, considered as a permanent policy, it is a waste of public money. The river brings down so much silt, which it deposits in its bed, that it is a constant race between the building up of these levees on the one hand, as against the river filling up its bed between the levees on the other, and you are never going to get through with the job nor are you going to be able to afford complete protection by handling it in that way. Fortunately, nature has provided a means for solving the problem by giving us a number of sites on the river for flood-control dams, the best known one being the Boulder Dam, where the whole flow of the river for any year can be stored and the river thereby completely regulated. By a high dam at Boulder it is possible to eliminate all flood menace to the lower basin, and at the same time store the water that is to-day running to waste and a menace to life and property while it runs to waste, and make it available for the reclamation of a million acres of land within the United States.

Mr. VAILE. Mr. Chairman, will the gentleman yield?

Mr. SWING. Not now, please.

In addition to that, as the water flows from the dam it will create power possibilities which the Government engineers say will repay the entire cost of the dam, with interest, in a period of 30 years.

This bill has heretofore carried an item of from $25,000 to $100,000 a year to enable the Government engineers to work out a solution for this lower Colorado River Basin problem. The local communities interested have contributed an equal amount of money. That survey has been completed, and the report was sent to Congress last year by the Department of the Interior. It recommends that the Boulder Dam be built by the Government primarily to solve this flood problem on the lower Colorado River. The dam will, as Secretary Work has said, "turn a natural menace into a national asset," because it will, while affording protection from floods, also guarantee from its reservoir an adequate and dependable supply of water for existing communities and for additional reclamation projects, also domestic water for Pacific coast cities, and an abundance of hydroelectric power badly needed throughout the entire Southwest. In the meantime these levees, of course, must be kept up. I am glad therefore to see this provision in the bill.

Mr. HASTINGS. Mr. Chairman, I ask recognition in opposition to the pro forma amendment.

The CHAIRMAN. The gentleman from Oklahoma is recognized.

Mr. HASTINGS. Mr. Chairman, I rise primarily to express my very great appreciation for the work of the subcommittee in the study and work that it has given to the preparation of the pending bill. All of the members of the subcommittee have been diligent and have given painstaking care to the various items that go to make up the bill. I want to commend the efforts and the painstaking care of the chairman of this committee [Mr. CRAMTON] for the immense amount of labor that he has given to the details of every item of this far-reaching, comprehensive bill dealing with the variety of subjects of particular interest to the western country. I know of no man since my service in Congress who has given more time and labor to the study of every item of the bill than the gentleman from Michigan, and as one deeply interested and as one coming from a State very greatly interested in many items of this bill, I want to express my personal appreciation and that of my State for the laborous service which he has brought to the study of the many problems covered by the bill. [Applause.]

I want also to take occasion to join with the chairman of the subcommittee in the merited compliment which he took occasion on yesterday to pay to my colleague [Mr. CARTER]. No man in or out of Congress has given more time and sympathetic thought to the correct solution of the Indian question. As a member of the Committee on Indian Affairs, and subsequently as its distinguished chairman and later as a member of the Committee on Appropriations, he has diligently applied himself to the study and proper solution of the Indian problem, and under his guidance and leadership it is rapidly being solved. Fair, open minded, diligent, constructive, he has approached and met every subject in such a broad-minded, patriotic manner as to meet the approval of the entire citizenship of my State, both Indian and white, and without regard to party. [Applause.] He is the dean of the Oklahoma delegation, has continuously represented his district in Congress since statehood, and has consistently risen in the esteem of Members of the House and of his party until he is at present chairman of the Democratic caucus and a member of the Committee on Appropriations, which I regard the most important in the House. [Applause.]

The other members of the subcommittee, Messrs. TAYLOR, FRENCH, and MURPHY, each deserve special commendation for their information and assistance which they have contributed to the preparation and reporting of a bill dealing with a large variety of subjects looking to the care of the dependents of the Nation and to the internal development of the country.

This bill presents an interesting study. It carries an amount recommended for appropriation of $226,473,638, or $7,700,508 less than that carried in the bill for 1926. I wanted to emphasize just here that it carries $610,064 less than requested in the estimate. The people of the country do not appreciate the painstaking care given by the committee to the several items of appropriation bills. They criticize Congress as being extravagant, and it is generally believed that we increase instead of closely scrutinizing every item and reducing appropriations wherever possible. Since the Bureau of the Budget has been created Congress, according to our distinguished chairman [Mr. MADDEN], has reduced the amounts estimated to be appropriated by the Bureau of the Budget by more than $350,000,000. I heartily agree with the policy of the subcommittee with reference to appropriations for the Indian Service. In two items appropriations are enlarged. The first is for education. In my view, industrial education is the hope of the Indian. This is a slow process. It can not be done in a year. It takes time. This bill carries increased appropriations for this purpose, and I know from my contact with the Indians of the country that hopeful results are being realized. The second item that I wanted to invite attention to is for health work. Tuberculosis and trachoma are prevalent among the Indians, and there is a very great demand for increased appropriations to stamp out these and other communicable diseases. At a meeting of the members of the Committee on Indian Affairs a most urgent appeal was made this week by Mrs. Atwood, representing the Federated Women's Clubs, in support of increased activity on behalf of the Government in this connection. The public, I believe, does not generally know that appropriations for this purpose have been very greatly increased from year to year. Under the head of general relief and hospitalization the present bill carries $756,000, or an increase of $56,000 over that appropriated for last year. A few years ago only an insignificant sum was appropriated for health work among the Indians. The amount carried in the present bill, while it may not be entirely adequate for the work to be accomplished, if properly used will prove of very great advantage, both to the Indians and the whites who dwell in the same communities.

The bill carries many items of particular interest to my State, and among them:

One hundred and eighty-five thousand dollars, allocated out of $850,000 appropriated, is for the work of the superintendent for the Five Civilized Tribes at Muskogee and his assistants, scattered throughout eastern Oklahoma, whose duty it is to give peculiar and sympathetic attention to the restricted members of the Five Civilized Tribes, which the department estimates to number about 17,000.

Thirty-eight thousand dollars is appropriated for the work of the probate attorneys, whose duties are to look after, protect, and guard the interests of the restricted Indians, with particular reference to probate matters in the various county courts, as well as represent them in all other courts in the State. This is a very important work. Congress has done what it could to make these positions nonpartisan. They are placed under the civil service. In fact, all of the employees in the Indian Service are under the civil service. When they become partisan they destroy themselves. Without commenting here, may I express the hope that the employees of the Indian Service, not only in my State but throughout the Nation, will become so enthused with the work of protecting their Indian wards that their time will be entirely devoted to the work for which they have been paid by the Government?

One hundred and fifty thousand dollars is appropriated in aid of the Indian schools throughout eastern Oklahoma in lieu of taxes not collected from the nontaxable Indian lands of the Five Civilized Tribes. This appropriation has been made for a number of years, and is continued in the pending bill.

Five thousand dollars is appropriated to continue the competency commission, before whom individual Indians can go and ask for the removal of their restrictions. The department estimates 17,000 living restricted members of the Five Civilized Tribes.

One hundred and sixty thousand dollars is appropriated for the Chilocco Indian School, which has an attendance of 800 Indian pupils. This school is doing a great work and is largely attended by Indians from the various tribes in Oklahoma. The Sequoya Orphan Training School, near Tahlequah, is the only school of the kind in America. While orphan children may attend other Indian schools, none but orphan children of the restricted class are eligible to attend this school. The bill enlarges the capacity from 250 to 300 and makes an appropriation for maintenance and support of $67,500, in addition to $9,000 for repairs and improvements, or a total of $76,500. This school is doing a commendable work in reaching out and salvaging the orphan children in eastern Oklahoma.

Appropriations are made out of tribal funds for the Osages. There were 2,229 enrolled members of the tribe in 1907. Some five or six hundred have since died. The conditions among the Osages are now being investigated and wide publicity given. I want to withhold adverse comment until the investigations are concluded.

There are two other matters that I desire to bring to the attention of the House. The first is that the affairs of the Five Civilized Tribes, from a legislative standpoint, have been wound up. During the Sixty-eighth Congress we passed jurisdictional bills to permit all of the Five Civilized Tribes to bring separate suits against the Government for any claims which they thought they had. These suits, I am informed, are now in course of preparation and will soon be filed and adjudicated. Practically all of the tribal lands have been sold and nearly all of the tribal funds have been distributed. The rolls were closed on March 4, 1907, by the act of Congress of April 26, 1906. I make this statement because almost daily letters are received by Members of Congress, and particularly by the delegation from Oklahoma, making inquiry about this subject. No additional legislation is necessary to wind up the affairs of the Five Civilized Tribes. It is now a question of administration. I have urged, in season and out of season, with all the vigor I possess expedition in this matter. The department has the authority to advertise and sell the coal and asphalt deposits belonging to the Choctaw and Chickasaw Tribes. This is an administrative matter. My judgment is that these deposits should be thoroughly advertised, so as to bring the highest possible dollar to the Choctaw and Chickasaw Tribes, and sold to the highest bidder, and the money distributed among the members of the two tribes entitled to the same. This would permit the members of these tribes to secure their funds and use them during their lifetime in the development of their other properties, and it would enable these vast properties to be developed and in that way it would add to the development of the cities and towns in those sections of the

country in eastern Oklahoma, increase the population, place these properties upon the tax rolls, and proportionately decrease the taxes of the several counties and of the State, and in a general way add to the prosperity of the people of the State, in addition to giving to the members of the tribe the money that is due them at an early date and during their lifetime.

The other suggestion that I desire to make is this: There are 33 Indian tribes in Oklahoma. When we speak of Indians in Oklahoma our minds naturally go to the Five Civilized Tribes and the Osages. There are, however, many smaller tribes scattered throughout the State of Oklahoma. The Department of the Interior estimates that we have 120,163 Indians belonging to the 33 tribes in the State of Oklahoma. Of these, 101,506 were enrolled as members of the Five Civilized Tribes and 2,229 in the Osage Tribe. For general information I append hereto a table showing the Indian population as estimated by the Department of the Interior in Oklahoma for the year ended June 30, 1925:

Indian population of Oklahoma June 30, 1925

Oklahoma	120,163
Cantonment	726
Arapahoe	221
Cheyenne	505
Cheyenne and Arapahoe	1,200
Arapahoe	719
Cheyenne	481
Kiowa Agency	5,022
Kiowa	1,725
Comanche	1,754
Apache	199
Fort Sill Apache	88
Wichitas, Caddos, and affiliated bands	1,256
Osage	2,726
Pawnee	1,229
Pawnee	809
Kaw	420
Ponca	1,411
Ponca	739
Tonkawa	50
Otoe and Missouria	622
Quapaw	1,796
Wyandots	511
Senecas	524
Eastern Shawnees	171
Ottawas	254
Quapaws	336
Seger	761
Cheyenne	621
Arapahoe	140
Shawnee	3,786
Absentee Shawnee	567
Citizen Potawatomi	2,227
Mexican Kickapoo	214
Sac and Fox	695
Iowa	83
Five Civilized Tribes	101,506
Cherokee Nation	41,824
By blood	36,432
By intermarriage	286
Delawares	187
Freedmen	4,919
Chickasaw Nation	10,906
By blood	5,659
By intermarriage	645
Freedmen	4,662
Choctaw Nation	26,828
By blood	17,488
By intermarriage	1,651
Mississippi Choctaw	1,600
Freedmen	6,029
Creek Nation	18,761
By blood	11,952
Freedmen	6,809
Seminole Nation	3,127
By blood	2,141
Freedmen	986
Total	120,163

The CHAIRMAN. Without objection, the pro forma amendment is withdrawn. The Clerk will read.

The Clerk read as follows:

For topographic surveys in various portions of the United States, including lands in national forests, $437,000, of which amount not to exceed $260,000 may be expended for personal services in the District of Columbia: *Provided,* That no part of this appropriation shall be expended in cooperation with States or municipalities except upon the basis of the State or municipality bearing all of the expense incident thereto in excess of such an amount as is necessary for the Geological Survey to perform its share of standard topographic surveys.

Mr. CRAMTON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Michigan offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. CRAMTON: Page 86, lines 6 to 15, strike out the paragraph and insert in lieu thereof the following:

"For topographic surveys in various portions of the United States, including lands in national forests, $525,000, of which amount not to exceed $300,000 may be expended for personal services in the District of Columbia: *Provided,* That no part of this appropriation shall be expended in cooperation with States or municipalities except upon the basis of the State or municipality bearing all of the expense incident thereto in excess of such an amount as is necessary for the Geological Survey to perform its share of standard topographic surveys, such share of the Geological Survey in no case exceeding 50 per cent: *Provided further,* That $445,500 of this amount shall be available only for such cooperation with States or municipalities, and of this $73,300 shall be immediately available."

Mr. CRAMTON. Mr. Chairman, I discussed this proposition at some length yesterday in my discussion of the bill as a whole, and I do not care to take the time now to repeat that discussion. Those Members who have not read that discussion and are interested in the statement of the real situation as to this appropriation, which has attracted a good deal of attention, are invited to consider the discussion which begins on page 1331 of the RECORD and includes the correspondence with the Director of the Geological Survey. The concluding letter of that correspondence includes this statement in response to a draft of that amendment which I submitted to him and which carries a much smaller amount:

On this basis, the final proviso in the amended item, as suggested in your letter, should read $439,500, and the total, $516,000, with the limitation for personal services in the District of Columbia placed at $300,000.

This amendment would then provide funds sufficient to fully meet the State cooperation already accepted in 1926 and the amount reported to you as expected for 1927, and so meets the expected needs under the Temple Act for these two years.

In the amendment which I have sent to the desk we have not only added the $4,000 that he suggested, but we have added $9,000 more, so as to be sure and that much more certain of taking care of the demands that may come if other States conclude to cooperate. It is our understanding, therefore, and the understanding of Dr. George Otis Smith, the head of the Geological Survey, and also of Doctor TEMPLE, the author of the Temple Act, which has been referred to on numerous occasions, that that will fully take care of State cooperation for the current year and the next year under that act in the topographic survey work.

Mr. TEMPLE. Mr. Chairman, I ask unanimous consent to proceed for 15 minutes.

The CHAIRMAN. The gentleman from Pennsylvaina asks unanimous consent to proceed for 15 minutes. Is there objection?

There was no objection.

The CHAIRMAN. The gentleman from Pennsylvania is recognized.

Mr. TEMPLE. Mr. Chairman and gentlemen of the committee, a good deal has been said in the last few days about the act referred to as the Temple Act, which is known officially as Public Act 498, Sixty-eighth Congress, an act approved February 27, 1925. It provides for the completion of the topographic survey of the United States and the publication of the topographic maps within a period of 25 years.

It seems to be assumed in some quarters that the completion of the topographic survey within a period of 20 years was dependent wholly on the cooperation of the States and that nothing is to be provided by an appropriation to carry out the program but a sufficient sum to match dollar for dollar the appropriations of the States.

I would like to call attention to the report of the Committee on Interstate and Foreign Commerce, which presented the bill

last year. The particular reason for doing so is that there was no debate on this bill when it passed. It was passed by unanimous consent. I was glad to have unanimous consent, and that arrangement being granted, I was afraid to begin any discussion for fear of unexpected consequences at that time. The statement of the Interstate and Foreign Commerce Committee, which reported the bill and recommended its adoption, was, and I shall read one paragraph:

According to figures from the Department of the Interior, during the fiscal year 1924, $365,000 of State funds have been made available to the Geological Survey for cooperative topographic mapping, and it is estimated that a larger sum will be available for 1925. Most of the State legislatures meet in 1925, and cooperating officials have indicated that the State cooperative allotments will be increased probably to the extent of $500,000 per annum. The estimate of the board of surveys and maps (which has had the advantage of reports from the advisory council to the board, made up in part of State cooperating officials) shows that the maximum amount of State cooperation to be expected for the purpose of this bill would be $700,000 in about the third year of its operation, to continue throughout the 20-year period—

A maximum of $700,000 a year is expected from the States, and when we get going there will probably be $2,400,000 a year from the United States Government, so that the spirit of the bill is not cooperation dollar for dollar but to bring the States up to the expected maximum of $700,000 a year and then pay for the rest of the work out of the United States Treasury. Let me take up the sentence at that point—

the maximum amount of State cooperation to be expected for the purpose of this bill would be $700,000 in about the third year of its operation, to continue throughout the 20-year period, excepting that appropriations would gradually decrease toward the end as the work neared completion.

I call attention particularly to the last sentence of that paragraph:

All State aid in this work of topographic mapping, as estimated by the Board of Surveys and Maps, would be approximately $12,000,000 in the 20-year period. These State allotments are in addition to the Federal appropriations listed in the table appended to this report.

In the table appended to the report the amounts run up for some years as high as $2,400,000 from the National Treasury.

The reason why the Board of Surveys and Maps is referred to so frequently is better understood when I tell you the origin of the bill. Before the creation of the Board of Surveys and Maps in 1919 attention was called to the fact that there are at least 12 map-making agencies of the United States Government. There was duplication; there was overlapping; and there was unnecessary expense. By Executive order in that year the Board of Surveys and Maps was created. That board is composed of representatives from each of these map-making agencies. They get together from time to time, discuss the work, and arrange among themselves to avoid duplication. I went down to a meeting of the Board of Surveys and Maps one day and I heard them all lamenting the fact that there was no general base map; that if there was such a map their work could be carried on with much less expense.

I heard the representative of the military mapping work lament that they did not have proper military maps, even of areas about some of our defenses and of places around military camps. I heard representatives of the Forest Service talk about the very great advantage there would be in having maps that could be used in the specific work they undertake within the forests. I heard the Coast and Geodetic Survey lament the fact that they were not able to complete the basic controls, the exact triangulation and spirit leveling that underlies all map making, and all around the committee table I heard representatives of the several organizations speak of the various uses they would have for the base maps, and I proposed to the members of the Board of Surveys and Maps that if they would mobilize their arguments and give me for use before the Congress the arguments I had heard them use there that day, I would undertake to put through a general and comprehensive plan for the completion of the topographic map of the United States in a shorter time than that in which the work could be completed by the method then going on. It will take about 100 years with the appropriations we have been making while this plan is to complete the survey and maps within 20 years.

Now, who is interested in it outside of these various map-making agencies of the Government? All the State highway commissions that are building roads know what advantage it is is to them and how much it saves in their surveys if they have a base map. The builders of railroads know the same thing. Everybody interested in developing municipal waterworks, where they contemplate the building of a dam to back water up into a reservoir, knows what advantage it is if they can sit in their offices, look at a contour map and see just how much land will be covered by the water that backs up behind a 10-foot dam and how much more land will be covered if they build a 20-foot dam. They know it will save an enormous amount of expense in surveying work on specific projects if they have this general base map completed. State geologists are interested; State highway commissioners are interested; municipalities all over the country are interested; the mining companies are interested; the railway companies are interested; and everybody interested in good roads, including the manufacturers of automobiles, have all got behind this work.

They were all supporting the bill, and about 50,000 engineers in the United States represented in the Federal Council of Engineering Societies actually got to work more than two years ago and you began to receive telegrams and letters, not meant as political pressure, because that was not the idea at all, but letting you know how useful this map is to your constituents and how much money it is going to save the whole country to have this map completed. The secretary of the Federal Council of Engineering Societies estimated to me that while this will cost the United States Government about $33,000,000 in 20 years and it will cost the States which cooperate $12,000,000, making $45,000,000 altogether, the saving to the business interests of the United States will be more than that for each year, and I believe the estimate is well within the proper limits.

Now, I want to call attention to one thing in connection with this particular appropriation. There has been a good deal of interest in what some persons have called the failure of the Budget Bureau to appreciate the fact that Congress had adopted a policy for the completion of the topographic survey within 20 years. I have been informed by some persons that the Budget Bureau has taken the ground that the bill does not authorize any appropriation beyond the year 1926. Why, it authorizes the completion of the work in 20 years.

Mr. CARTER of Oklahoma. Will the gentleman yield?

Mr. TEMPLE. The work can not be completed without money, and if it authorizes the work it authorizes the means necessary for the performance of that work. Yes; I yield to the gentleman from Oklahoma.

Mr. CARTER of Oklahoma. The gentleman, of course, is familiar with his bill, I know, but I call his attention to section 3, the succeeding and last paragraph in the bill, which seems to specifically authorize the appropriation of this money to the 30th day of June, 1926.

Mr. TEMPLE. Yes.

Mr. CARTER of Oklahoma. It is true there is in the first section of the bill provision made for the work without an authorization being specifically made in the language using the word "authorized."

Mr. TEMPLE. In the first section of the bill——

Mr. CARTER of Oklahoma. I have the bill before me and I am familiar with that, but the other is a succeeding section——

Mr. TEMPLE. The gentleman is not familiar with what I am about to say.

Mr. CARTER of Oklahoma. No, I am not; and I want to hear the gentleman on that. The other is a succeeding section and it seems to me to contemplate or authorize an appropriation only until June 30, 1926.

Mr. TEMPLE. If there were nothing in the bill but the third section that would be true. I want to discuss the other section and will answer the gentleman's question, I think.

Without attempting to read the whole bill the first section authorizes the completion of the topographic survey in 20 years and provides that in carrying out the provisions of that act all facilities and agencies of the Government may be made use of from funds or from appropriations herein authorized or from such appropriation or appropriations as may hereafter be made for the purpose of this act. The act contemplates not only appropriations for the one year 1926 but for other years, and the third section merely indicates the year when the 20-year program shall begin.

Mr. CARTER of Oklahoma. This was evidently a mistake, and let me ask the gentleman if this is not the way it occurred?

Mr. TEMPLE. I have other things I wish to say and I think I have discussed that sufficiently, but I yield to the gentleman briefly.

Mr. CARTER of Oklahoma. Was not this bill introduced to appropriate the money to begin with and afterwards the words "authorized to be" inserted?

Mr. TEMPLE. No; that is not the case.

Mr. CARTER of Oklahoma. Then I can not see why section 3 was put in.

Mr. TEMPLE. For the purpose of indicating when the 20-year program should begin.

I want to state now what will happen if only the amount proposed in this bill as amended should be appropriated. There would be about $79,000 available for administration and purely Federal activities. There would be a charge of 12½ per cent for administration against cooperative allotments, and it is estimated that there would be left after the proper amount is taken for cooperation with the States only about $15,000 for actual work in Federal projects. Now, work is ordinarily done for the Army and is also done in the national forests for the Forest Service, and when a specific work is authorized for reclamation projects the topographic branch of the Geological Survey is called on to furnish the maps. If the controls prepared by the Coast and Geodetic Survey are ready they can go in any place and do a piece of work and tie it into the general topographic map that is to be completed later. Now, on the other hand, if we have nothing available for Federal work by the topographic branch, each of these other agencies will have to do its own mapping for special projects, and it will do only such mapping as is necessary for that particular project. Those surveys will be of no use when we come to complete the topographic survey of the whole country. Therefore, by refusing the topographic people appropriations sufficient to cooperate in Federal work at the present time we must appropriate in other bills for these specific purposes. We will find it necessary to appropriate money to the national forests, to the Army, and to various other agencies which is to be spent in *mapping* which they ought not to have to spend at all. We apparently make a saving in the appropriations made in this bill, but we make necessary other appropriations in other bills and increase the cost to the Treasury of the United States. I would like to see it larger, but I am going to vote for the gentleman's amendment because it is apparently the best we can get.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. CRAMTON. Mr. Chairman, I hope the gentleman from Pennsylvania will not leave with the suggestion just expressed that "it is the best we can get." As a matter of fact, so far as State cooperation is concerned, the amount provided will fully take care of all the State cooperation that we have good reason to expect this year.

Mr. TEMPLE. All that is in sight now, but I think the legislatures which are still meeting will probably make other appropriations, and a deficiency appropriation may be necessary later to meet the appropriations of this year.

Mr. CRAMTON. Of course, what would be done by way of a deficiency appropriation will be determined when that appears.

Mr. TEMPLE. Yes; I hope so.

Mr. CRAMTON. But the judgment of the man in the Government service who has the responsibility and is best qualified is to the effect that all we have got reason to expect will be offered by the States is cared for in this way.

Mr. TEMPLE. Yes; and his letter does not discuss the matter of cooperation in other Federal projects.

Mr. CRAMTON. And no effort has been made on my part to take care of anything except the State cooperation.

Mr. TEMPLE. That is, no Federal cooperation. That is true.

Mr. CRAMTON. Doctor Smith in his letter to me said:

> I regard the restriction of their expenditure to cooperative mapping projects as in accord with the spirit of the Temple Act.

Mr. TEMPLE. He had forgotten the report of the committee when he wrote that. I appreciate the gentleman has been perfectly fair in all he has done with us, and I regret that he does not quite agree with me or does not at all agree with me on the amount that is necessary, but the gentleman has given us very fair treatment.

Mr. TAYLOR of Colorado. Will the gentleman permit me to suggest that all the legislatures do not meet this year. Most of them meet next year.

Mr. TEMPLE. I did not say all of them. There are only 24 that cooperate. I know of one that certainly is in session now.

Mr. TAYLOR of Colorado. Most of the others will be in session next year rather than this year.

Mr. TEMPLE. Not all of them.

Mr. TAYLOR of Colorado. I said nearly all of them.

The CHAIRMAN. The question is on the adoption of the amendment offered by way of a substitute for the paragraph.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

> For continuation of the investigation of the mineral resources of Alaska, $50,000, to be available immediately, of which amount not to exceed $30,000 may be expended for personal services in the District of Columbia.

Mr. TREADWAY. Mr. Chairman, I move to strike out the paragraph. Mr. Chairman, this is another illustration of the easy way we are making appropriations for Alaska. Here is an item of $50,000 for the continuation of the investigation of the mineral resources of Alaska, $30,000 of which can be expended here in the District of Columbia.

I have carefully read the testimony of Doctor Smith before the subcommittee, and I confess for one that I can not see any reason whatever for $50,000 of the taxpayer's money being expended for the investigation of mineral resources of Alaska. We are told time and again of what tremendous resources there are in Alaska, and that is about as far as it goes. And still they want $50,000 a year, $30,000 to be expended here in the District for the continuation of the study of the mineral resources of Alaska.

Doctor Smith in his testimony says that there is only a part of Alaska that is in any way inhabited or used in the development of mineral resources which has been already investigated, and there is a tremendous area, thousands and thousands of acres, that we have not yet even as yet carefully explored for mineral resources. I have no doubt that the appropriation will stay in the bill, but I feel it encumbent upon me as one Member of the House, when an item as unnecessary as this, its usefulness unsupported by any testimony, to state my opposition to it.

At some time in the distant past I suppose a good case was made out for exploring the mineral resources of Alaska, and since that time there has been from $50,000 to $75,000 of the taxpayers' money put into the bill for continuation of that investigation and examination. Undoubtedly, unless by a freak of nature in some way or other this thing can be run down and the attention of Congress centered on such appropriation and negative action taken, the process will continue indefinitely. There is no doubt that there is ample opportunity to spend $30,000 here in the District for some purpose or other, but Doctor Smith does not say in his testimony just how it is to be expended, and I doubt if anyone can justly justify the expenditure of $50,000 for this purpose. I submit that no Member of this House or a business man connected with any corporation would put out any such amount of money for any such purpose. I trust the paragraph may be stricken from the bill.

Mr. CRAMTON. Mr. Chairman, there was a time when this item was $100,000, and it has been reduced to $76,000, and the Budget recommended $63,000, and the committee has recommended $50,000. The gentleman from Massachusetts last summer spent a few days in Alaska and has already expressed to the House on a former occasion his opinion that the railroad is a failure—that there are no valuable minerals there and never will be in Alaska, and so forth.

Now, here is a little meek item of $50,000 for Uncle Sam to investigate his own property. It is a great domain, as we all know. It does not belong to anybody else; it belongs to Uncle Sam. We are proposing to spend the meek sum of $50,000 for Uncle Sam to find out what there is on his property, to ascertain what minerals are there, and what shall be the course of development in the future in that Territory.

The gentleman from Massachusetts has made us shudder with his tale of woe of the terrible and depressing conditions in Alaska.

The Budget cuts the item $12,000, and the committee, which had before it the gentleman from Massachusetts with reference to conditions in Alaska, was so impressed by what he presented that it cut the item further to $50,000. But simply because it has had this cut we ought not to continually kick Alaska around and denounce the country which has no friends.

Seriously, it does not seem to be good business for the United States to cease to investigate the mineral resources of that Territory that has produced such tremendous amounts of minerals.

Mr. McLAUGHLIN of Michigan. Will the gentleman yield?

Mr. CRAMTON. Yes.

Mr. McLAUGHLIN of Michigan. Will the gentleman state how this $30,000 is to be expended in the District of Columbia?

Mr. CRAMTON. That same question comes up frequently. As a matter of fact that is not actually all spent for services in the District of Columbia. Many of the technical experts who perform work in the field are really carried on the roll here and come here from time to time.

Mr. McLAUGHLIN of Michigan. They do the work in Alaska?

Mr. CRAMTON. They do the work in the field and some work here. For instance, I recall that Dr. Philip Smith a year ago spent several months in Alaska; went away up into the far north in an investigation of the oil reserves. It was a very arduous trip and took a long time, but I have no doubt that Dr. Philip Smith's salary was carried here on the roll in the District of Columbia all of the time that he was actually in Alaska.

Mr. McLAUGHLIN of Michigan. It is not usual, is it, in the operations of Government to make appropriations for expenditures in the District of Columbia where the work is actually performed in a distant part of the country?

Mr. CRAMTON. It would not be true of an individual who was stationed in Alaska permanently, but this is a case of a technical expert. He went there at one time for a short stay, and no doubt he would be continued to be paid here. There is a further statement I would like to make before I conclude. The Secretary of the Interior, Doctor Work, having noted the cut which our committee has made in this item, wrote me making an appeal to us to restore the Budget figures of $63,000, insisting that it was vitally necessary to have that amount continued. I have sent for the letter, but I do not happen to have it at hand, but that was the only item in the bill in respect to which the Secretary made an appeal after we had reported the bill. I think that should serve to impress the gentleman from Massachusetts [Mr. TREADWAY] and others as to how seriously the Secretary of the Interior, who is responsible, regards this item.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. ARENTZ. Mr. Chairman, I move to strike out the last word. Such work as is now being carried on in Alaska by the United States Geological Survey is comparable to the work carried by Clarence King from 1866 or thereabouts up to the time of his death in Denver a number of years ago, which has been used by men all over the United States, and in fact all over the world, who were in search of mineral deposits. The data gathered by Clarence King in the 20 years or more of his work on the fortieth parallel, which included almost all of the entire western country, was compiled in a series of volumes which explain in detail the deposits of all sorts of minerals metallic in nature. The men who leave Washington to-day, last year, and this year, and for many years to follow, I hope, for Alaska will stay up there for a period of four or five months, or as long as they can stay in the country and see the ground and not be interfered with by snow. These men stay in the wilderness examining the mineral deposits. The only place where you can find such deposits is away from transportation and habitation of all sorts in the country which is not developed. These men come back to Washington, and during the seven months of the year when they are out of Alaska they work up their notes in detail, work up their plans, make their maps, and in turn these are developed in the printing offices of the several departments of our Government and made up into monographs and professional papers. If anyone will look over these professional papers and monographs—and I do not hesitate to recommend to the gentleman from Massachusetts [Mr. TREADWAY] that he examine such wonderful publications as have been made by the Geological Survey on the resources of Alaska—he will find in them a wonderful source of information. Upon the completion of the Alaskan Railroad, and such roads and trails as are contemplated, I dare say that the deposits which have been examined and which are shown in the different publications of the Geological Survey will induce men of means, men of that hearty spirit who are prospectors in fact, also to go there from different sections of the country and invest in these natural resources and bring about the production of minerals of all sorts from that wonderful country.

Mr. WINTER. The object of this is eventually to make a populated area of that great district, is it not?

Mr. ARENTZ. Yes.

Mr. BLANTON. Mr. Chairman, I offer the following as a substitute for the amendment of the gentleman from Massachusetts.

The Clerk read as follows:

Substitute by Mr. BLANTON: Page 87, line 7, strike out "$30,000" and insert in lieu thereof "30 cents."

Mr. BLANTON. Mr. Chairman, the gentleman from Massachusetts [Mr. TREADWAY] has not only an inquiring mind, but also he is possessed of much surplus energy. I am not surprised that he wonders why $30,000 of the $50,000 that is to be expended for research work in Alaska should be expended here in Washington. Now, that he has gotten through with spending $600,000 on his Coal Commission, and spending more money having its voluminous reports printed, though still unread, and the fact that coal is down at such a low price that every poor family can buy all they want this winter—now that he has accomplished so much along that line, he is through with that proposition, and his mind is now diverted to little items of $50,000.

Mr. TREADWAY. Mr. Chairman, will the gentleman yield?

Mr. BLANTON. Yes.

Mr. TREADWAY. I wish to disclaim any expectation of being through with the coal problem.

Mr. BLANTON. Well, if the gentleman is not through, then God save the country, because ever since he spent that $600,000 coal has been going higher and higher; and if it keeps on, I doubt whether we poor men can burn it at all.

But I want to tell you about what is really the matter with this $50,000. The gentleman's inquiring mind does not go far enough. He asks a question, and he lets the chairman of the committee give him generalities, and then the gentleman from Nevada [Mr. ARENTZ] and the gentleman from Wyoming [Mr. WINTER] are called upon to come to the chairman's rescue. I will tell you what the situation really is.

Whenever you let a corps of Government employees here be once organized and you let the chief be put on the pay roll, and the assistant chief, and the second assistant chief, and the third assistant chief, and all down the line, completing a full corps of employees, you never can take them off the pay roll. They are going to stay there forever. The very minute we get through with them and go to discharge them they will come back to their Senator or to their Representative from Massachusetts or the chairman of this Subcommittee on Appropriations and say, "Put me back," and they are put back.

That is why this $30,000 is to be spent in Washington. It is to continue paying the salaries of employees that we are through with. And I will tell you why the other $20,000 of the money is to be spent in Alaska. This corps gets tired of doing nothing in Washington during the summer months. They want to go to Alaska for relaxation in the summer. They want that $20,000 for the expense of their summer trip. The gentleman from Michigan [Mr. CRAMTON] himself takes these delightful trips out there; he goes to Alaska once in a while; he goes to Oregon, and then he puts in his $400,000 Baker project, when the Budget has not recommended it, because he goes out there on these summer trips; and he is so kind-hearted that he can not deny these poor, useless employees of this corps that we are through with their western trip. He has not the heart to deny them the right to do that which he himself does. [Laughter.]

Mr. WINTER. Mr. Chairman, will the gentleman tell me why the Budget is not a Rock of Gibraltar when it comes to the Riverton project?

Mr. BLANTON. Oh, the Budget lets the chairmen of the subcommittee on appropriations do what they want to do. When they want something to stay in, it stays. When they want to put in a $400,000 Baker project, upon which the chairman of the subcommittee dined up in the far Northwest with the gentleman from Oregon [Mr. SINNOTT] last summer, they put it in. What matters the Budget when it comes to putting in items which they themselves want? I am for a proper Budget first and last and all the time. It is the only means of effecting economy. I am ready to stand by the Budget and its recommendations if it is not selfishly set aside to favor just a few, and I hope the gentleman from Wyoming and other gentlemen from Western States will tell this chairman that unless his committee adopts a general rule and a general policy applicable alike to all we will change the rule about the Committee on Appropriations doing all the appropriating. [Applause.]

The CHAIRMAN. The time of the gentleman from Texas has expired. The pro forma amendment will be withdrawn.

Mr. BLANTON. That was a pro forma amendment. I had to get something out of my system. [Laughter.]

Mr TREADWAY. Mr. Chairman, in order that there may be perfect harmony amongst us here, I ask unanimous consent to withdraw the amendment I offered.

The CHAIRMAN. The gentleman from Massachusetts asks unanimous consent to withdraw his amendment. Is there objection?

There was no objection.

Mr. CRAMTON. Mr. Chairman, I ask unanimous consent to extend my remarks by inserting the letter to which I referred.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Following is the letter referred to:

THE SECRETARY OF THE INTERIOR,
Washington, January 6, 1926.

Hon. LOUIS C. CRAMTON,
House of Representatives.

MY DEAR MR. CRAMTON: I note in the report of your committee that the item "For continuation of the investigation of the mineral resources of Alaska" by the Geological Survey is recommended as $50,000. Surveying in Alaska by the Geological Survey began in 1898, and from 1900 to date the appropriation for the work has never been less than $60,000, and for the six years, 1911 and 1913 to 1917, the appropriation was a hundred thousand dollars a year. In 1918, recognizing that war measures required curtailment of all noncontributing investigations, the survey reduced the amount of this item to $75,000, a figure which has been maintained approximately in the appropriations ever since.

It is perhaps unnecessary to point out that the purchasing price of the dollar in terms of field expenses in Alaska is now probably less than half that of the pre-war dollar. The needs of surveying Alaska's mineral wealth are not less now than then; in fact, it is my conviction that as the more readily developed deposits become exhausted the need for this service becomes even more urgent. About 60 per cent of the Territory is still unsurveyed, and much of this area holds promise of containing mineral deposits of value. A trained personnel has been built up, which, if destroyed, as it inevitably will be if the appropriation is curtailed, will cost many thousand dollars and years of training to replace. Curtailment of the appropriation below $75,000 means a serious reduction of efficiency, because every dollar below that amount must come from the productive field investigations, which are the foundation of the work.

I therefore most earnestly urge your reconsideration of this item and approval of at least the amount recommended by the Bureau of the Budget.

Very truly yours,

HUBERT WORK.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

For preparation of the illustrations of the Geological Survey, $18,000.

Mr. SMITH. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Idaho offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. SMITH: Page 88, line 3, after the word "Survey," strike out "$18,000" and insert "$25,580."

Mr. SMITH. Mr. Chairman, the proposed increase in the appropriation for the preparation of illustrations for the reports of the Geological Survey is necessary because of the congested condition in that bureau, incident to the printing of governmental reports. In the hearing before the committee the Director of the Geological Survey submitted a list of publications which had been ready for printing for some time, many of them for a year, and in one or two instances for over two years. He urged an increase of the appropriation as proposed in this amendment to employ three additional illustrators, so that these valuable reports, which have been compiled at great expense of time and money to the Government, may be made available to the people.

The matter was brought to my attention when I was in Idaho during the summer by a large number of persons who are interested in the mineral development of my State, including Prof. Francis M. Thomson, dean School of Mines, University of Idaho, and secretary Idaho Bureau of Mines and Geology, who addressed me the following letter:

SCHOOL OF MINES, UNIVERSITY OF IDAHO,
AND STATE BUREAU OF MINES AND GEOLOGY,
Moscow, Idaho, September 22, 1925.

Hon. ADDISON T. SMITH.

DEAR MR. SMITH: Our good friend, Mr. Robert N. Bell, advises me that in accordance with my request he recently took up with you the question of the publication of Dr. George Rogers Mansfield's report on the phosphate deposits of southeastern Idaho.

These phosphate deposits, as you are doubtless aware, comprise probably the greatest ultimate mineral resource of the entire State of Idaho. The United States Geological Survey, largely as a result of Doctor Mansfield's work, estimates that over five and one-half billion (not million) tons of minable phosphate rock is definitely known to exist in this State. Professor Kirkham, of our staff, who has gone over most of this territory and who has compiled a paper thereon, copy of which is being inclosed herewith, is inclined to raise this estimate to 6,000,000,000 tons, which would represent about 85 per cent of the total known phosphate resources of the world and well over 90 per cent of the phosphate resources of the United States.

Doctor Mansfield's report, of which I have seen the maps, is a complete, voluminous, and scholarly discussion not only of the phosphate resources but of the entire geology of Bear Lake, Caribou, and parts of Bannock and Bingham Counties, comprising an area of 2,000 to 2,500 square miles and represents the fruit of 10 years of intensive work. The maps, if available, would be of great aid to us in our work and would be of particular value also in the study of the possible oil resources of southeast Idaho, and the lack of these has been a decided handicap to us in the work of the Idaho Bureau of Mines and Geology.

The officials of the survey estimate it would cost from $10,000 to $15,000 to publish the report, and they seem to feel, not unnaturally, that this represents too large a proportion of their meager appropriation for printing.

In view of these facts and of the great importance of this report to the citizens of Idaho, I am taking the liberty of suggesting that you seriously consider the advisability and propriety of initiating some means by which this situation might be remedied. Possibly a special appropriation for this very purpose might, on your initiative, be attached as a rider to the general appropriation for the United States Geological Survey at the next session of Congress; or there may be some other means which would suggest itself to you as being more appropriate to accomplish the purpose in mind. In any event, I hope you will give the matter your very earnest consideration, and that you will be kind enough to advise me of any action which you may take.

Faithfully yours,

FRANCIS A. THOMSON,
Dean School of Mines and Secretary
Idaho Bureau of Mines and Geology.

On my return to Washington early last November I called on the Director of the United States Geological Survey, Dr. George Otis Smith, and urged the printing of this report, who advised me that the report of Doctor Mansfield had been submitted nearly two years ago, but as the bureau was greatly in arrears in the publication of the reports because of the lack of appropriation to employ illustrators and that no prediction could be made as to when the report would be published. Subsequently he addressed me the following letter:

UNITED STATES DEPARTMENT OF THE INTERIOR,
GEOLOGICAL SURVEY,
Washington, November 11, 1925.

Hon. ADDISON T. SMITH,
House of Representatives,

MY DEAR MR. SMITH: The report by Mr. Mansfield on the "Geography and geology of southeastern Idaho" is among the many that are awaiting preparation by the editors and illustrators of the survey. Publication of these reports is regrettably slow, partly because of the limits of the publication funds, but perhaps even more because of congestion in the sections of texts and illustrations. On November 1 they had in hand 44 reports (excluding geologic folios, and also reports that had been forwarded to the Government Printing Office, but that will require much additional work when proofs are returned). The status of these reports was:

	Texts	Illustrations
Prepared	19	[1] 1
Partially prepared	4	8
Not touched	21	34

[1] Plus 1 report that does not contain illustrations.

The editors are somewhat ahead of the illustrators. It is estimated that preparation of the illustrations now in hand would require the entire time of the present staff for a year and a half, and new reports are constantly being received from the field branches; in fact, at a somewhat faster rate than they can be prepared for publication. The order in which the reports are to be taken up is frequently reconsidered, and energies are concentrated on those believed to be in most urgent public demand. The report on southeastern Idaho is regarded as important, and will receive attention as soon as possible. It is, however, very large, both in text and in illustrations, and I do not feel able to promise that the illustrations will be completed or even begun during the present fiscal year.

Cordially yours,

GEO. OTIS SMITH, *Director.*

In view of the value of this and similar reports which the director states can not be printed because of the lack of illustrators, I earnestly hope that my amendment may be adopted.

Mr. CRAMTON. Mr. Chairman, will the gentleman yield?

Mr. SMITH. Yes.

Mr. CRAMTON. That is a matter that the committee went into at some length. I understood that the number "three"

would not be permanent but that they are temporarily necessary in order to bring the work up to date?

Mr. SMITH. Yes.

Mr. CRAMTON. The amendment is agreeable to the committee.

Mr. WINGO. Mr. Chairman, I came into the House a moment ago and heard the gentleman from Texas [Mr. BLANTON] submitting a few observations on the sanctity of the Budget. I was thereby reminded of the fact that I had not given any expression of my views on the Budget at this session of Congress, and in order to preserve the regularity of the proceedings I think I will repeat what I usually say about the Budget. [Laughter.]

I usually am provoked to say what I do say about the Budget by some man who either knows nothing about the philosophy of our Government or who has a feeling of indifference for it. Whatever may be the faults and the virtues—and he has both—of the gentleman from Texas, I have come to the conclusion in the haze of his performances in the last few years that he had at least some knowledge of the philosophy of our Government and some respect for it. Therefore I was somewhat surprised to hear him glorifying the Budget. He says he is in favor of the Budget, and in favor of backing it up and standing by it.

Mr. BLANTON. I am for a proper Budget. [Laughter.]

Mr. WINGO. Yes. The gentleman from Texas is now like he was on an occasion when he was a candidate for judge down home in Texas, when somebody asked him how he stood on the stock law. It was a ticklish question. The gentleman said, "All right; I will answer your question. Some of my friends are for it and some are against it, and, by the eternal gods, I always stand by my friends." [Laughter.]

A little while ago we heard him emphatically and without reservation say he proposed to stand by the Budget, but now he qualifies his allegiance with the word "proper." I had a schoolboy write and ask me once, "What is the Budget, Mr. Congressman? I have got to debate it." I did not have time to sit down and answer him in detail, but I told him how he could make a decided hit by developing the idea that a budget is something that everybody is for and which nobody understands. [Laughter.]

Now, let us see, seriously, gentlemen, to what a state the House of Representatives has fallen when a great leader like the gentleman from Texas [Mr. BLANTON], the watchdog of the Treasury and general custodian of public morals, especially of the District of Columbia, so forgets the philosophy of the party to which he belongs that he stands up here and absolutely gets apoplectic in defending the Budget and saying you must not put your unholy hands upon its recommendations. Why, time was when this House of Representatives was very jealous of its prerogatives. Our old forefathers did not have any more sense than to believe in popular government; they did not have any more sense than to adhere to the cardinal theory of Anglo-Saxon government that the people's representatives should control the pursestrings. So they erected a popular assembly and provided that that assembly should be the House of Representatives, and that all revenue bills had to originate in this House, so that the people's Representatives could keep their hands on the pursestrings. But in this new day and generation which has been brought to us by the gentleman from Texas and other political reformers the House of Representatives is no longer supposed to have enough intelligence to handle the people's pursestrings. The cry went out over the land that we are a lot of log-rolling and pork-hunting nincompoops, so that we can not be trusted with the Public Treasury. So there was a great deal of to-do about it, to erect a bureau called the Budget to legislate on appropriations, and Members of Congress were present and officiated at their own funeral; they hog-tied themselves so that now the people's Representatives are no longer supposed to have anything to do with determining how the people's money shall be spent; and if any gentleman has the temerity, after a personal investigation of a project out West which has been turned down by a swivel-chair expert in the Bureau of the Budget—if any gentleman has the temerity to come upon the floor and do his duty to his constituents and to the country and insist that it is a proper expenditure of public funds, asking the House of Representatives to carry out a worthy project and make the proper appropriation, he runs the danger of being criticized by the distinguished gentleman from Texas, because the Budget does not approve.

The CHAIRMAN. The time of the gentleman from Arkansas has expired.

Mr. WINGO. Mr. Chairman, I ask for five minutes more.

The CHAIRMAN. The gentleman from Arkansas asks unanimous consent to proceed for five additional minutes. Is there objection?

There was no objection.

Mr. CRAMTON. Will the gentleman yield?

Mr. WINGO. Yes.

Mr. CRAMTON. And in the case of the Baker project, a project which originally was approved by the department and has on three different occasions heretofore been approved by Congress.

Mr. WINGO. Yes; there is the very point, gentlemen, and I am serious about it. I am for a proper budget. The need for a budget was for what purpose? It was to aid Congress in seeing that the appropriations we made were properly expended by the executive departments and that they stopped the old vicious practice, which existed when I first came to Congress, of coming here and asking Congress for exorbitant sums, making it necessary for us to wade through a mass of stuff and then be compelled to guess at what should be the proper amount. So the Budget was established for the purpose of acting as a check upon inefficiency and waste as well as misleading information from the executive departments. We centered responsibility in the President so that he, with some degree of intelligence, would know how to make recommendations to us from the executive department of the Government and in keeping with his constitutional duty and prerogative, after which we could proceed to make up our minds as to what were proper expenditures of public funds. It was never intended, by those who knew something of the philosophy of the Budget and of our Government, that we should abdicate entirely and say that the Budget, and the Budget alone, should determine what should be considered proper expenditures.

Why, as I have said, I am for a proper Budget. I think it is wise to have a Budget system by which the executive departments are held down and there is some efficiency not only in the expenditures but some degree of certainty and orderly processes in making their recommendations and bringing their information to us. But when that information is brought here this House, and this House alone, is charged with the responsibility of determining what is the proper charge upon the Treasury and whether or not some project out in the West is a proper thing on which to spend the public funds.

Tell me that when once the Budget has spoken we are estopped. I resent that and shall always protest against it, even though I may be considered out of date. I am against this new-fangled idea that Congress has not the capacity, nor is it any of its business to sit here and determine how public money shall be appropriated, and that it is within the province of the Budget to undertake to determine what shall be spent and what shall not be spent.

You have to crawl on your belly to some executive officer now in order to see that a legitimate appropriation is made for a legitimate project, like the one referred to that has been approved by Congress and started.

This fall I was in Washington and I happened to meet one of my colleagues. I said, "What are you doing up here?" He said, "Well, seeing about a certain project." I said, "The committee is not in session," and he said, "No; but I am up here to see the Budget." The time was when you had to go before committees of this House and have them determine what was a proper charge upon the Treasury, and if they thought it was a proper charge they would approve it.

Time was when you had to go before the committees of this House and prove what was a proper charge upon the Treasury. Now you have to play around and kowtow to some officials down here in one of the bureaus and convince them what is a proper expenditure, and you must get their permission for you to discharge your constitutional duty and say what shall be done with the public money. I resent it. I shall protest against it. You may say it is wrong and that the business world approves the Budget. Yes; they approve it because they think of the results that are to be obtained and believe what they are told it is. Do not you mistake. Sooner or later the American people are going to have a revival of respect for the old orderly processes of this Government. They are going to wake up to the fact that the surest safety for this Government is to go back to the old three coordinate branches of government, and they are going to hold this House of Representatives responsible in a rigid way to doing its duty, and this Congress is going to wake up and quit lying down and taking the abuse and acquiescing in the theory that we are either incompetent, inefficient, or else that we are wholly indifferent to our oaths and have no sense of responsibility, certainly not enough to handle the people's money.

I say we are not doing it now, and we should do it; and the cry of pork barrel is one that will be raised sooner or later against the allotment of funds by these bureaucrats, who will allot funds by a worse kind of log-rolling process than any that ever disgraced any bill that ever passed through this House. [Applause.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Idaho [Mr. SMITH].

The amendment was agreed to.

The Clerk read as follows:

Grand Canyon National Park, Ariz.: For administration, protection, and maintenance, including not exceeding $2,000 for the purchase, maintenance, operation, and repair of motor-driven passenger-carrying vehicles for the use of the superintendent and employees in connection with general park work, $103,560; for construction of physical improvements, $28,500; including not exceeding $15,500 for the construction of buildings, of which not exceeding $3,000 shall be available for a duplex cottage for employees, and $5,000 for a warehouse; not exceeding $72,000 for the construction of a comprehensive sewage disposal system at administrative headquarters on the south rim; in all, $132,000.

Mr. CRAMTON. Mr. Chairman, I offer an amendment which I send to the desk which is simply to correct some errors in the print.

The CHAIRMAN. The gentleman from Michigan offers an amendment which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. CRAMTON:

Page 91, line 12, strike out the sum "$103,560" and insert in lieu thereof "$103,500."; in line 13, after the sum "$28,500," strike out the semicolon and insert in lieu thereof a comma; in lines 16, 17, and 18 strike out the following: "not exceeding $72,000 for the construction of a comprehensive sewage disposal system at administrative headquarters on the south rim."

The CHAIRMAN. Unless there is objection the three amendments will be voted upon en bloc.

There was no objection.

The amendment was agreed to.

Mr. HAYDEN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Arizona offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. HAYDEN of Arizona: Amend on page 91, line 17, by inserting: "For commencing the construction by the Secretary of the Interior of an approach road from the National Old Trails highway to the south boundary of the Grand Canyon National Park, $400,000: *Provided*, That said road shall be located in accordance with the survey heretofore made by the United States Bureau of Public Roads, and constructed at a limit of cost of $1,200,000."

Mr. HAYDEN. Mr. Chairman, during the past summer $18,000 of forest highway money was expended by the Bureau of Public Roads in the survey of an approach road from the National Old Trails Highway to the Grand Canyon National Park, the construction of which has heretofore been authorized by law. The following letter from the chief of the Bureau of Public Roads gives the preliminary estimate of the cost of this approach road, upon which I have based my amendment, which provides for an appropriation sufficient to pay the first third of the total expenditure to be made:

UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF PUBLIC ROADS,
Washington, D. C., December 16, 1925.

Hon. CARL HAYDEN,
House of Representatives.

MY DEAR MR. HAYDEN: Further reference is made to our letter of November 30, 1925, regarding the survey of the approach road from the National Old Trails Highway to the Grand Canyon Park in Arizona.

We are just in receipt of a letter from our regional office at San Francisco, in which they advise us that the field work has been completed, but the design has not yet been made. It is estimated that the final report will be ready some time in February, 1926.

For your information we might state that the length surveyed from the National Old Trails Highway to the park office is 57.6 miles. The design contemplated is an 18-foot crushed-rock surfacing. The preliminary survey estimate of cost is approximately $1,200,000.

On receipt of the final report we will give you further details.

Very truly yours,

THOS. H. MACDONALD,
Chief of Bureau.

I ask for this appropriation because the county in which this road is located can not build it. Coconino County is the second largest county in the United States, with a total area of 18,623 square miles, or 11,918,720 acres, which is more than the combined area of the States of New Jersey and New Hampshire. The ownership of land within the county is divided as follows, in acres:

National forests:		
Coconino	1,289,320	
Tusayan	1,107,380	
Kaibab	738,894	
Sitgreaves	216,614	
Total forest reserves		3,352,220
Indian reservations:		
Navajo	4,105,000	
Walapai	370,000	
Kaibab	25,000	
Havasupai	518	
Total Indian reservations		4,500,518
National parks and monuments:		
Grand Canyon	612,062	
Wupatki	2,234	
Navajo	360	
Walnut Canyon	960	
Total parks and monuments		615,616
Unappropriated and unreserved:		
Public domain		1,117,632
Total land in Federal ownership		9,585,986
State lands		723,350
Privately owned lands:		
Mineral lands	1,066	
Grazing and dry-farming lands	1,606,938	
Total lands subject to taxation		1,609,384

From this tabulation, which I have made up from the best available sources, it is evident that the Federal Government is by far the greatest landowner in Coconino County, and that but 13½ per cent of its entire area can be taxed to support the local government. Under such circumstances how can the comparatively few residents and taxpayers of that county be expected to build a road, not for their use but for the use of people from every State in the Union who desire to see the wonders of the Grand Canyon National Park?

Mr. CARTER of Oklahoma. Will the gentleman yield?

Mr. HAYDEN. I yield.

Mr. CARTER of Oklahoma. The gentleman will recall that an investigating committee, of which I was a member, went over this road in March, 1923, and the gentleman did us the honor of accompanying us on that trip. As I recall, this road is entirely outside of the Grand Canyon National Park.

Mr. HAYDEN. That is correct.

Mr. CARTER of Oklahoma. Part of it is on public land and part of it on privately owned land, as I recollect?

Mr. HAYDEN. A part of the road is on public land, but the major portion of it is within a national forest reserve. Very little of it crosses privately owned land.

Mr. CARTER of Oklahoma. The gentleman will recall that at that time we made an agreement with the board of supervisors and other authorities of the State and of Coconino County by which the county was to turn over to the Federal Government the so-called Bright Angel Trail, and in lieu thereof the Government was to furnish the money for the building of this approach road. A number of the officials of Coconino County were there, and everybody seemed to be satisfied, and I had thought that by now the agreement would be carried out and the road constructed. Can the gentleman tell us why that agreement which was made nearly three years ago has not been carried out?

Mr. HAYDEN. The question of the sale of the Bright Angel Trail was submitted by a referendum to a vote of the people of Coconino County and rejected at the general election in 1924. I shall insert in the record a table showing the vote in Coconino County on that proposal:

	Yes	No
Flagstaff No. 1	148	84
Flagstaff No. 2	40	69
Flagstaff No. 3	156	227
Flagstaff No. 4	218	174
Williams No. 2	9	196
Williams No. 1	4	201
Bellemont	9	6
Kendrick Park	3	12
Pittman Valley	3	14
Greenlaw Mill	11	8
Tuba City	9	15
Loys	6	0
Camp No. 1	3	9
Garland Prairie	15	18
Sedona	9	10
Red Lake	1	19
Upper Oak Creek	8	6
Canyon Diablo	3	6
Riordan	2	12
Doney Park	12	25

	Yes	No
Parks	17	5
Mormon Lake	1	4
Grand Canyon	26	97
Long Valley	1	5
Anderson Canyon	4	0
Spring Valley	32	1
Winona	2	11
Camp No. 24	2	9
Flagstaff Lumber Camp	2	13
Bly	1	2
Fredonia	11	46
Lee's Ferry	1	4
McDonald Mill	12	3
Total	781	1,311

Mr. CARTER of Oklahoma. Mr. Chairman, it seemed to the committee, which was investigating the matter at that time, that a very fair proposition was agreed upon from the standpoint of the Federal Government and one which Coconino County ought to have accepted. The county was getting the road built without any cost to it whatever and was only surrendering that which it seemed the Federal Government might properly acquire. The county authorities were not only satisfied with the exchange, but they enthusiastically approved it at that time. I am therefore surprised that the people of Coconino County rejected the proposition. It seems to me that with the support of such men as came before us at that time in favor of the exchange of the Bright Angel Trail for this approach road there might yet be an opportunity for an approval of that agreement or some similar agreement. I do not think the Federal Government ought now to be called upon to build a road with this matter in its present situation, with Coconino County still owning that trail within the park. The Federal Government ought to build the approach road, but the Government should also own the trail. Since such a fair and equitable proposition as the one that was made has been turned down, as well as I like the gentleman from Arizona and notwithstanding his persuasive and convincing ways, I do not believe the Federal Government ought to enter into the building of this approach road without some definite understanding with reference to Bright Angel Trail.

Mr. HAYDEN. Mr. Chairman, having demonstrated that Coconino County can not build this approach road to the Grand Canyon National Park, let me say that an equally convincing argument can be made to prove that the State of Arizona can not build it.

The CHAIRMAN. The time of the gentleman from Arizona has expired.

Mr. HAYDEN. I ask for five additional minutes, since the gentleman from Oklahoma took up a large part of my time.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. CARTER of Oklahoma. If the gentleman will permit, the approach road to the Grand Canyon National Park can be built to-day without any expense whatever to the State or the county if Coconino County will surrender the Bright Angel Trail, as was originally agreed.

Mr. HAYDEN. The greater part of the approach road from the National Old Trails Highway to the Grand Canyon National Park, as surveyed and located by the Bureau of Public Roads, lies within the Tusayan National Forest. It has been frequently suggested that this road could be built with forest-highway funds, of which about $275,000 is available for expenditure in Arizona each year. The best information that I have on that subject is found in the following letters from Colonel Greeley and Mr. Pooler.

WASHINGTON, *November 25, 1925.*

Hon. CARL HAYDEN,
House of Representatives.

DEAR MR. HAYDEN: Reference is made to our conference at my office on November 24.

In the matter of the Grand Canyon Highway, Mr. Pooler's letter of July 27 correctly sets forth my viewpoint. It should be stated, however, that the final decision on the selection of projects and the expenditure of the forest-highway funds rests with the Secretary of Agriculture.

As brought out by Mr. Pooler, there seems to be no probability at all of any forest-highway money being available for the construction of the Grand Canyon Highway next year. His statement was based on the allocation of forest-highway money to Arizona, being that available from the maximum forest-highway appropriation legislatively authorized by Congress. If Congress appropriates less than this maximum, the prospects of obtaining money for projects other than those already approved are even more remote.

Very sincerly yours,

W. B. GREELEY, *Forester.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, SOUTHWESTERN DISTRICT,
Albuquerque, N. Mex., July 27, 1925.

Hon. CARL HAYDEN,
Care of Mojave Miner, Kingman, Ariz.

DEAR CONGRESSMAN HAYDEN: Inspector Rachford has just told me of your concern over Colonel Greely's alleged statement with respect to the allotment of forest-highway funds to the Maine-Grand Canyon road. I was present at the Senate committee hearing and Colonel Greeley's position was as follows:

(1) That the Maine-Grand Canyon road was a part of the forest-highway system for Arizona inasmuch as so much national forest land would be traversed, and inasmuch as this road would, though only in a moderate sense, serve the Tusayan National Forest.

(2) That from a forest-highway priority standpoint, however, there were several other roads, either on the system or recommended by the Forest Service for inclusion on the system that took precedence over the Maine-Grand Canyon road and that accordingly, except for the expenditure of money for survey purposes in order to establish costs, this project would have to wait for a considerable period of time before construction money from the forest-highway fund would be available.

(3) That he viewed the Maine-Grand Canyon highway as one of probably more interest to the national traveling public than to the Forest Service as a forest highway; that he believed it had merit as an approach road to the Grand Canyon National Park for special consideration in the form of a special appropriation, and that if such legislation were proposed he would certainly not oppose it but would instead favor it, on the basis of such information as he had then at his disposal.

Colonel Greeley was then asked as to whether the Forest Service would cooperate to the extent of $250,000 from forest highway money if it developed that the road would cost $750,000 and a special appropriation of only $500,000 were secured, and he replied—

(4) That the Forest Service would be willing to contribute on this basis, but he intended his preceding qualifying statements as to priority to be applicable here, and had no intention that this statement would be construed to indicate that the Forest Service would next year put in $250,000 of forest highway money, or the following year $250,000, but that ultimately, with due regard to priority from a forest highway system standpoint, would cooperate in construction to the extent of $250,000. This, of course, necessarily followed, in view of his earlier statement to the committee that the Forest Service would ultimately build the whole road if the national traveling public could afford to wait until the project could be completed, with due regard to forest highway priorities.

As a matter of fact, every dollar in sight for this fiscal year and next fiscal year is obligated on going projects like Flagstaff-Angel and Clifton-Springerville. The money for several years longer is needed on Arizona forest highways already constructed but requiring surfacing or completed as to certain sections but not as to others or of vital importance on the forest-highway system, as, for example, the stretch of road to connect the excellent Gila County system of roads with our Flagstaff-Clints Well or Flagstaff-Long Valley project, which would make Mormon Lake and the timbered regions in northern Arizona readily and conveniently available to the heat-stricken sections of southern Arizona. Our development system extends south as far as Clints Well or Long Valley, and our road will be constructed that far south by the end of the next calendar year. It had been our hope that the missing highway link from the Gila County line between Pine and Strawberry to Long Valley or Clints Well could be constructed as our next forest-highway project, and I still hope that this can be provided for in fiscal year 1928.

My own candid opinion is that no forest-highway construction money could become available for the Maine-Grand Canyon road without violating priority principles in less than six or seven years, and that from then on contributions to that project would probably have to be limited to $100,000 or thereabouts a year. This, of course, means looking quite a long way into the future, but you have asked for my forecast, and this is the best I can now make. Circumstances may develop that would modify it.

Very sincerely yours,

FRANK C. W. POOLER,
District Forester.

Mr. CARTER of Oklahoma. Does the gentleman know of any other road built by the Government outside of the national park boundaries?

Mr. HAYDEN. I hold in my hand a memorandum from the National Park Service which shows that over $600,000 has been expended out of the Federal Treasury for the construction of approach roads to the National Parks. I have not the time to read the letter but will print it in the RECORD.

UNITED STATES DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, January 8, 1926.

(Memorandum for the Hon. CARL HAYDEN, House of Representatives.)

The following is a statement showing the amounts appropriated for approach roads leading out of Yellowstone, Yosemite, and Zion National Parks:

Park	Fiscal year	Amount
Yellowstone	1897	$5,000
Do	1901	20,000
Do	1902	25,000
Do	1903	75,000
Do	1906	30,000
Do	1908	10,000
Do	1911	20,000
Do	1012	25,000
Do	1913	6,000
Do	1914	20,000
Do	1915	40,000
Do	1916	30,000
Do	1917	31,000
Do	1918	12,500
Do	1919	40,000
Do	1920	33,000
Do	1921	15,900
Do	1922	26,900
Do	1923	35,900
Do	1924	15,900
Do	1925	15,900
Do	1926	15,900
Total		548,900
Yosemite	1923	5,200
Do	1924	5,200
Do	1925	5,200
Do	1926	5,200
Total		20,800
Zion	1923	37,808.66

A. E. DEMARAY,
Acting Assistant Director.

Mr. HAYDEN. There is no other way to obtain the money at this time for the construction of this approach road except through a direct appropriation from the Treasury of the United States. The United States ought to build it because at least 90 per cent of the traffic which will pass over it will be interstate traffic. It is the gateway to a great national playground which all of the people of the United States desire to see and to enjoy.

Mr. McKEOWN. Is that the road from Williams to the Grand Canyon Park?

Mr. HAYDEN. Yes.

Mr. McKEOWN. I am in favor of building or improving that road. I traveled over it last summer.

Mr. HAYDEN. I am glad to have the assurance of the gentleman from Oklahoma that he is in favor of the construction of this road. I feel that the time has arrived when a suitable appropriation ought to be made to commence work upon it, and I therefore offer the amendment in the hope that it may be adopted. This appropriation bill carries additional sums of money for further improvement of the roads within the Grand Canyon National Park, which is entirely proper. Good business judgment, however, requires that the plan be completed by the construction of a suitable approach road, for otherwise the roads within the park can not be used as they should be by the public.

Mr. CRAMTON. Mr. Chairman, there is a great deal in the appeal of the gentleman from Arizona, for the county has not the money to build this road. It has a very small amount of property subject to taxation—about 90 per cent of the land is taken up with Indian reservations, public lands, and national forests. The road is needed for the accommodation of the automobile tourists of the country who desire to visit that park, to bring them from the Santa Fe Trail up 50 or 60 miles into the park. I have received some letters criticizing the Government because there was not a better approach road.

This should be known, however, that we have not heretofore been building approach roads to reach national parks, and we could not afford to start that practice. Once we start the practice, there would be no end to it.

The situation at Grand Canyon is a very compelling one. When the gentleman from Oklahoma [Mr. CARTER] and myself were in conference with the people interested, two years ago, they wanted to sell us the Bright Angel Trail, of which the House has heard something heretofore. The trail runs from the rim into the floor of the canyon and belongs to the county, from which they derive a profit of about $5,000 a year. At that time we worked out an agreement that the Federal Government would take over and improve that road. The Forest Service some time will improve the greater part of it, but it will be quite a number of years. Eventually the National Government will spend the money for it through the Forest Service. But, as I say, we made an agreement that we would recommend that the Government take over this road and appropriate $100,000 for its improvement, to be followed by further appropriations contingent on the trail being turned over to the Government. The trail is of some importance to the Government. When the committee went there, there were some complications attending the Bright Angel Trail that made it desirable that we should have it. That was agreeable to the officers of the county, but the agreement was not carried out, as the electors of the county voted it down. If they had agreed to it, $100,000 would have been expended last year, and a second $100,000 would have been expended on this road the current year, for such an item had been recommended by the department and approved by the Budget a year ago. When the result of the election became known, it was thrown out of the Budget.

Personally, it is not a case of threat to the county; but without some reason to take that road out of the general rule of approach roads the Government can not afford to take it over, and that reason was offered by this contract with the county for the Bright Angel Trail. Until the county desires to go ahead with that transfer, it is not desirable or possible to enter on the construction of that road. I hope the gentleman's amendment will not prevail.

While I am on my feet, this House has heard something about the Cameron claims affecting the Grand Canyon and with reference to the Bright Angel Trail. There were three sets of mineral claims that menaced the public enjoyment of the Grand Canyon Park. One set of those claims was passed on by the Supreme Court of the United States in 1920, when it was held that the claims were invalid. Notwithstanding that fact, the men who held the claims continued in possession of them and stood in the way of needed development of the park for public use. Agitation by our committee and effective action by the Secretary of the Interior and the Attorney General resulted in the courts issuing an order putting them out as trespassers.

There was a second class of claims in the Federal court, delayed and delayed for certain reasons that might be inferred of a political character until this last October Judge Bourquin, of Montana, sitting in the Federal court at Phoenix, found that that set of claims also was invalid. Unless that case is appealed, that puts an end to that class of claims. Judge Bourquin's decision is appended at the end of my remarks as Exhibit A.

A third class has been pending in the land office at Phoenix, and I hold in my hand a decision arrived at by the register of the land office on December 19, in which he holds that there be a further continuance, after sufficient continuance heretofore through several years to make the heart sick.

The decision of Register Farrell appears as Exhibit B.

The plea of Register Farrell for more time for development of the claims and for dismissal of the contest appears quite marvelous when you read the opinion of the Commissioner of the General Land Office just rendered, and which overrules Farrell, and declares that—

> the evidence shows that no discovery was made on any one of the so-called locations, and that the land embraced therein is nonmineral in character, the locations were null and void, and the lands are part of the national park.

The fact is Farrell was so connected with parties to the controversy and with the controversy itself as to have properly disqualified him from sitting in the case, as is shown by Exhibit C. His politics are set forth in Exhibit D, but he was appointed register in 1924.

The decision of the Commissioner of the General Land Office which appears hereafter as Exhibit E is the final act freeing that marvelous gift of nature from the grasp of selfish private interest. All the so-called mineral claims that stood in the way of development in the public interest are disposed of and the people of the United States have come into their own.

In this connection I want to commend the noteworthy public service rendered by Mr. Harold Baxter, of Phoenix, who was appointed a special assistant by Attorney General Stone, and who has brought this litigation to a successful conclusion in the face of intrigue, special influence, political manipulation, and other difficulties that can not be imagined by those not familiar with these cases. He has rendered the country a service courageous and complete.

The Cameron claims are no more.

Bright Angel Trail should cease to be a private toll trail and become free to all. It requires considerable expenditure to be made safe and easier to travel. The county Coconino can not afford to spend the money necessary; the Federal Government can not spend the money on a privately owned trail. I hope soon the people of the county will give us the excuse we have sought for improvement of the approach road from the Santa Fe trail to the park by turning the Bright Angel Trail over to the Government. When they do I will be delighted to cooperate with the gentleman from Arizona along lines of his amendment as Mr. CARTER and I sometime ago agreed with the officials of Coconino County.

EXHIBIT A

UNITED STATES DISTRICT COURT, ARIZONA

United States *v.* Stetson, et al. No. E-86

In this suit to quiet title to lands, plaintiff claims the premises by virtue of the Grand Canyon National Monument created January 11, 1908, and embracing them, and defendants claim them by reason of locations for placer deposits of unnamed variety, made in January, 1919.

In Cameron *v.* United States (252 U. S. 452) the Supreme Court upheld the validity of the reserve for the monument against mining claims subsequently located. Defendants seek to escape the consequences of this decision by appeal to "points" they claim were neither presented nor decided by the court therein. One is that the statute provides for reservation of "objects," and giving due heed to construction, the canyon is not an object. The argument better be presented to the Supreme Court. However, the point is not impressive, for that the statute includes "historic landmarks," than which none greater than the canyon and of a kind that has been so recognized from time immemorial. All over the West will be found mining claims tied to statutory "permanent monuments," consisting of ravines, gorges, canyons. And the like are famous as landmarks the world over. Legally reserved, there is nothing since in Executive orders upon which to base reasonable contention deserving consideration that the monument reserve has been to any extent abolished or opened to mineral locations.

Decree for plaintiff.

BOURQUIN, *Judge.*

DECEMBER 8, 1925.

EXHIBIT B

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Phoenix, Ariz., December 19, 1925.

United States *v.* Ralph H. Cameron et al., involving 28 placer locations (Ct. 5701)

By his letter "FS" of August 30, 1922, the Commissioner of the General Land Office ordered adverse proceedings against R. H. Cameron and others, the charge being:

"(1) That the lands embraced by the hereinafter-described mineral locations are nonmineral in character; that no discovery of mineral has been made upon them by the locators or claimants, Alta, Bueno, Casa, Deva, Emir, Eskimo, Fox, Gila, Hopi, Illini, Jicarilla, Kiowa, Largo, Mohawk, Nunez, Otol, Pawnee, Quito, Rickaree, Shawnee, Tonto, Transit, Umatilla, Vaca, Washoe, Xenia, Yaki, and Zuni."

The commissioner's letter of August 30, 1922, named Hon. RALPH H. CAMERON, S. E. de Queiroz, the United States Platinum Co., and C. Frank Doebler as defendants in the case. Notices were registered to the defendants. With the record are return cards showing service on all of the parties except C. Frank Doebler. An unclaimed registered letter shows that notice was sent to him at the address given in the commissioner's letter.

Answer and denial of the charges was filed by Hon. RALPH H. CAMERON April 30, 1923.

The Government's testimony was submitted before Mr. Tom Rees, clerk of the Superior Court of Coconino County, Ariz., at Flagstaff, Ariz., and by depositions.

The final hearing in the case has been continued from time to time, last continuance being to November 16, 1925, on which day Mr. R. M. Daly, inspector, Interior Department, appeared before the register of this office. Mr. B. P. Lester appeared for the defendants. The record discloses that at final hearing contestee's attorney did not introduce any evidence, he having been advised that a further continuance had been granted for the purpose of securing witnesses, and available witnesses were not called upon to testify. Later advices from the department received at this office on day following hearing show the attorney's information to have been erroneous.

It is shown by the record that the Government's side of the case is the only one presented; and as the case does not involve application for patents, and in view of the fact that large sums of money have been expended in development work, and no injury can result to the Government in allowing such development to continue, it is recommended that contest be dismissed.

Respectfully,

L. L. FERRALL, *Register.*

(Record to G. L. O. December 19, 1925.)

EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 17, 1925.

Hon. LOUIS C. CRAMTON,
House of Representatives.

MY DEAR MR. CRAMTON: In response to your verbal request to be furnished information to show whether L. L. Ferrall, register of the Phoenix land office, has been associated with RALPH H. CAMERON in any way, I have to advise you that with the record of N Contest No. 3200, which involved certain mining claims of RALPH H. CAMERON in the Grand Canyon National Park, there is a paper dated August 28, 1913, signed by RALPH H. CAMERON, N. J. Cameron, and L. L. Ferrall, appointing George J. Stoneman and Reese M. Ling as their attorneys to represent them in proceedings before the Phoenix land office in the matters pertaining to the Millionaire, Sentinental-Treasure, Peg Leg, and Hilltop lode claims.

The location certificates of the above-mentioned claims were not found with the record, but in the joint decision of the register and receiver of the Phoenix land office, rendered May 25, 1918, in the above-mentioned contest, it is stated that the Peg Leg lode claim was located February 5, 1906, by R. H. CAMERON, L. L. Ferrall, and N. J. Cameron, and adverse proceedings were directed by this office on April 19, 1913, against the Hilltop lode claim, located May 5, 1906, by the three parties mentioned. Ferrall does not appear as locator in the other claims.

In said contest No. 3200 there is also a copy of a joint report by the forest supervisor of the Tusayan National Forest, and a mineral examiner of the Forest Service, dated October 10, 1912, in which it is stated that the claimants of the Peg Leg lode claim are R. H. CAMERON, L. L. Ferrall, and N. J. Cameron. This is a closed case, the locations having been declared null and void.

In Phoenix 05215, a closed contest case involving the Magician lode claim, is a statement in a copy of a report by the assistant to the solicitor, Department of Agriculture, dated July 16, 1913, in regard to the hearing being set before L. L. Ferrall, notary public at Grand Canyon; that Ferrall is a brother-in-law of the defendant Cameron, and a colocator of Cameron in some of the other mining claims in the Grand Canyon, on which adverse reports have been made. In this case L. L. Ferrall made an affidavit as to the nonmineral character of the Alder mill site, located in connection with said Magician lode claim. This affidavit was sworn to May 17, 1905.

In the case of mineral application Phoenix 05216, also a closed case, L. L. Ferrall made affidavit as to the nonmineral character of the Willow mill site, taken in connection with the Wizard lode claim, claimed by RALPH H. CAMERON. This affidavit was sworn to May 17, 1905.

A carbon copy of this letter is inclosed.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

EXHIBIT D

REGISTRATION BLANK (A)

STATE OF ARIZONA, *County of Maricopa, ss:*

I, the undersigned elector, do solemnly swear (or affirm) that my name and signature as signed below is my true name and signature. If I have not personally signed it, it is because ———; and it was signed at my request by the attesting officer; my age is 21 years, or over; occupation, receiver United States Land Office; nativity, Ohio; naturalized or declared my intention in ——— court in ——— County, in State of ———, on ———, 192—, as appears by the naturalization papers exhibited herewith, and I am affiliated with the Democratic Party. That I am able to read the Constitution of the United States in the English language without being prompted or reciting from memory. Present residence is in Phoenix 16 precinct,

Maricopa County, Ariz., or at No. 318 W. Moreland Street, in the city of Phoenix; that I will have resided in this State one year immediately preceding next election.

In testimony whereof, I sign my name three times.

(1) L. L. FERRALL, Elector.
(2) L. L. FERRALL.
(3) L. L. FERRALL.

My address for receiving mail is:
Town or city, Phoenix.
No. ——, Street, Same.
P. O. Box No. ——.
R. F. D. No. ——, Box No. ——.

Subscribed and sworn to by the elector before me this 20th day of May, 1924.

[SEAL.] LOUELLA B. GOLZE,
Notary Public.

(My commission expires April 26, 1928.)

Said elector has passed test of reading a section of the Constitution of the United States in English, is 5 feet 7½ inches tall, weighing approximately 120 pounds, is of American nationality, male sex, and has the following other characteristics: ———.

LOUELLA B. GOLZE,
Registering Officer.

(Registration officer print information below, 5899.)

STATE OF ARIZONA, *County of Maricopa, ss:*

I, W. H. Linville, county recorder in and for the county and State aforesaid, hereby certify that I have compared the foregoing copy with the original registration of L. L. Ferrall, filed and entered in my office on the 20th day of May, 1924, in Phoenix Precinct, Book No. 16, of the county register of voters of Maricopa County, and that the same is a full, true, and correct copy of such registration and of the whole thereof.

Witness my hand and seal of office, this 18th day of May, 1924.

[SEAL.] W. H. LINVILLE,
County Recorder.

EXHIBIT E

UNITED STATES DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 11, 1926.

United States *v.* Ralph H. Cameron et al. Involving alleged placer locations in Grand Canyon National Park. Locations declared null and void.

REGISTER,
Phoenix, Ariz.

SIR: By office letter "FS" of August 30, 1922, addressed to your office, adverse proceedings were directed against the Mohawk, Kiowa, Jicarilla, Gila, Hopi, Illini, Largo, Nunez, Otol, Pawnee, Quito, Rickaree, Shawnee, Tonto, Umatilla, Vaca, Washoe, Xenia, Yaki, Zuni, Transit, Eskimo, Fox, Alta, Buena, Casa, Deva, and Emir placer claims situated in Grand Canyon National Park, upon the charges that the lands embraced in the claims named are nonmineral and that no discovery of mineral has been made upon them by the locators or claimants, instructions being contained in said office letter "FS" that notice of the proceedings should be served on Hon. RALPH H. CAMERON, United States Senate, Washington, D. C.; S. E. de Queiroz, Ashborne, Pa.; the United States Platinum Co., RALPH H. CAMERON, president; and C. Frank Doebler, last address St. Margaret Hotel, 129 West Forty-seventh Street, New York, N. Y.

Notice of the charges were sent out by your office on March 28, 1923, following receipt of a telegram from this office requesting that your office advise the status of the proceedings, and such notices were served on the parties named by registered mail, the letter addressed to said Doebler being returned unclaimed.

Rule 5, rules of practice, requires that the register shall act promptly on all applications to contest.

Joint answer was filed October 30, 1923, by RALPH H. CAMERON on behalf of himself, as agent for S. E. de Queiroz, and as president of the United States Platinum Co., denying the charges and alleging that the lands embraced in each of the claims are mineral in character and that a proper and sufficient discovery of mineral was made upon each of the locations by the locators or claimants, and hearing was requested to determine the truth of the charges and the answer.

January 5, 1924, there was filed in your office a request, by the special agent in charge of hearings for the Government, that the hearing in this case be set before the clerk of the superior court at Flagstaff, Ariz., at 10 a. m. on February 29, 1924, accompanied by subpœnas addressed to W. H. Cranmer, Kayenta, Ariz., and Charles A. Diehl, Phoenix, Ariz. In response to this request your office acknowledged receipt thereof by letter dated January 5, 1924, and it was stated therein:

"As Senator CAMERON will be in Washington, D. C., until after adjournment of Congress we do not feel that we should set the case without ascertaining if date would be convenient for him. Also, we prefer to set the case at this office. If the Government can subpœna Mr. Diehl of Maricopa County, and Mr. Cranmer of Navajo County, and require them to go to Coconino County to testify before the clerk of the superior court at Flagstaff, Ariz., they can certainly require them to appear before this office.

"We will notify you when we hear from Senator CAMERON."

Paragraph 7, circular No. 460 (44 L. D., 572), relative to proceedings in contests on report of representatives of the General Land Office reads:

"If a hearing is asked for, the local officers will consider same and confer with the Chief of Field Division relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant."

Circuler No. 460 is also printed on the back of Form 4–018A used for notifying claimants of charges preferred by this office.

The register and receiver were evidently confused as to the proper procedure.

The hearing set for February 29, 1924, was continued by this office January 15, 1924, upon request of Senator RALPH H. CAMERON, until after adjournment of the Congress then in session.

On July 1, 1924, the representative of this office in charge of hearings requested you to set the hearing before the clerk of the superior court of Flagstaff, Ariz., at 10 a. m. September 23, 1924. Neither the letter mentioned nor a copy thereof, nor the correspondence pro and con relative to the matter, was received with the record.

On August 20, 1924, the Commissioner of the General Land Office directed you from Salt Lake City to forthwith issue notice that testimony be taken in Flagstaff on October 2, 1924, at 10 a. m., which you acknowledged August 25, 1924, stating in your letter that you had complied with the request.

September 19, 1924, continuance of the hearing set for October 2, 1924, was granted by this office upon request of Senator CAMERON to October 10, 1924, and on September 27, 1924, continuance was granted to October 20, 1924, on which date the taking of testimony began before the clerk of the superior court at Flagstaff, Ariz., the Government appearing by counsel, and the defendants, S. E. de Queiroz and United States Platinum Co., appearing by their counsel, Leo W. McManee. Senator R. H. CAMERON and C. F. Doebler did not appear in person or by attorney.

Counsel for Government moved for judgment by default against R. H. CAMERON and C. Frank Doebler, whereupon counsel for de Queiroz and United States Platinum Co. stated that he was being assisted by B. P. Lester, attorney for RALPH H. CAMERON, who was not in attendance at the hearing. Counsel for Government stated:

"As the record shows that Mr. B. P. Lester represents R. H. CAMERON, one of the defendants in this contest, but has not filed his appearance, it is assumed that he is representing him unofficially and does not intend to cross-examine Government witnesses or introduce any testimony. Notwithstanding his position, I still do not waive my motion for judgment by default against R. H. CAMERON, one of the defendants in this proceeding."

Testimony was submitted on the part of the Government only, at the conclusion of which it was stipulated that the hearing be continued until December 12, 1924, before your office.

From exhibits of location notices of the claims in question introduced by the Government it appears that the locations of the claims were made in January and February, 1907.

The claims, consisting of two groups, are located upon lands within the Grand Canyon National Monument and were withdrawn by presidential proclamation of January 11, 1908, from appropriation and use of all kinds under all public-land laws subject to all prior valid adverse claims.

The testimony of the witnesses for the Government discloses that the lands within the claims are absolutely barren of minerals in any form. The claims consist of two groups of claims located side by side, all of the claims with the exception of the Transit, Eskimo, Fox, and Alta straddle the Colorado River in the gorge thereof, which gorge throughout the claims is, generally speaking, about one-half mile wide and from 1,100 to 1,300 feet deep, the sides of the main gorge being very steep. As described by the witnesses for the Government, the bottom of the main gorge throughout the area covered by the claims and for many miles east and west is comprised of igneous rocks, which have been planed off in ages past, and subsequently a series of sedimentary formations have been made, laid down upon the surface of the igneous rocks, so tightly consolidated that in order to secure any mineral deposits therefrom, assuming that the rocks contain such deposits, it would be necessary to break the rocks by drilling and blasting.

On portions of each claim there are scant deposits of gravel and bowlders, the bowlders ranging from 3 pounds to several hundred pounds, and the gravel being rounded and sharp cornered, mostly of the latter nature, almost in total fragments of limestone and sand-

stone, derived from the side walls of the canyon and overlying sediments, the gravel not being of a placer nature, for the reason that it contains no mineral values whatever. One of the groups contains 23 claims, the western portion lying north about 3 miles from the terminus of the Grand Canyon Railroad. The second group lies about 3 or 3½ miles southeast of the first group and consists of five claims. Bright Angel Trail crosses some of the claims of the first group, and on one of the claims is located the National Park Service Suspension Bridge, which cost $40,000. On a part of one of the claims of the first group is located a part of Phantom Ranch, a scenic and pleasure resort maintained by Fred Harvey for the entertainment of tourists.

It is shown that each claim was carefully examined for any possible mineral showing without result, and although no mineral-bearing formations were discernible, nevertheless numerous samples from practically every claim were taken from the rock formations, and from concentrates obtained by panning the gravel deposits, which samples were divided, and portions of each sample submitted to various reputable assayers for thorough tests to ascertain whether the samples contained valuable minerals of any kind. Although the samples were given the most painstaking tests, the results were reported as nil by the assayers so far as minerals were concerned.

It was brought out by the testimony of a witness for the Government that the claimants had been notified in advance of the time when the lands were to be examined by representatives of this office, but claimants did not see fit to take advantage of this information by being present on the lands in person or by representation to point out any mineral-bearing formations or deposits.

The uncontradicted testimony of the Government witnesses as to the nonmineral character of the ground furnishes the apparent reason. As no discovery of mineral was made or could be made, claimants were in no position to aid in this regard.

At the hearing held December 12, 1924, before your office the Government appeared by counsel and the defendants, S. E. de Queiroz and United States Platinum Co., appeared by their counsel, B. P. Lester.

Counsel for Government stated that he would like to have the record show that Senator R. H. CAMERON was not represented in person or by attorney at the hearing held at Flagstaff.

"Mr. LESTER. I think the first page of the record shows that I was merely in attendance at the hearing.

"Mr. DALY. Assisting Mr. McNamee.

"Mr. LESTER. Yes.

"Mr. DALY. But you are not officially representing Senator CAMERON?

"Mr. LESTER. No."

Attorney for defendants offered an application for adjournment of the final hearing and the taking of testimony at this time, on the ground of the absence of Senator CAMERON, a material witness, and presented Senator CAMERON'S affidavit dated December 3, 1924, in which was stated:

"I am a witness in the above-entitled matter, as well as a party thereto, being the locator of several of the claims involved in this controversy and being entirely familiar with the topographical and geological conditions of said claims and the deposits of mineral thereon, and at the hearings in the above-entitled matter I shall testify with reference to the location of the claims and the discoveries of mineral thereon."

Counsel for Government opposed the motion for continuance which nevertheless was granted by the register and receiver, the hearing being continued to April 6, 1925.

By office letter of December 26, 1924, your order of continuance was vacated, and you were directed to set the final hearing before you on March 11, 1925.

Under direction of this office the hearing set for March 11, 1925, was continued from time to time at the request of Senator CAMERON until November 16, 1925, when proceedings were had.

In the transcript of the proceedings it is stated that the Government and the defendants, including Senator CAMERON, appeared by counsel, with the exception of C. Frank Doebler.

CAMERON and Doebler should both have been held to have been in default because of their nonappearance at the first hearing had.

At the hearing on November 16, 1925, counsel for the defendants, B. P. Lester, stated that he had received a telegram from Senator CAMERON that the Interior Department had granted an extension of from 60 to 90 days for the defendants to produce their witnesses and as he had been informed that counsel for the Government had no knowledge of such continuance requested that the matter be continued until 1 p. m. for the purpose of allowing time for the Santa Fe office to confirm his understanding of the postponement. Counsel for Government declined to consent to the postponement. You declared a recess until 1 o'clock.

Proceedings were resumed at 1 o'clock.

Counsel for defendants stated that he was awaiting further instructions from his clients with respect to this matter, and would not at this time put on any witnesses.

Counsel for the Government moved for default judgment against all the defendants, which was opposed by counsel for defendants. You stated that you would pass upon the matter at a later time, after you had time to think it over and look over some records.

Had the proceedings been conducted in an orderly manner you would have passed upon the matter at once, as you had no official notice of any postponement in view of which the mere statement of the defendants' attorney was entitled to no consideration. You should have known that had a postponement been granted by the Secretary of the Interior your decision either way would have been nullified.

Instead of granting an extension the Secretary of the Interior denied the request of Senator CAMERON, and a telegram to that effect was sent you on November 16, 1925, which was not received by you until the day following.

Thereupon you were requested by this office to bring the matter to a close as soon as possible by rendering a decision and transmitting the record to this office, but before this came to pass it was necessary for this office to make numerous urgent inquiries as to the status of the matter.

On December 19, 1925, you finally made recommendation to this office in the following words:

"It is shown by the record that the Government's side of the case is the only one presented; and as the case does not involve application for patents, and in view of the fact that large sums of money have been expended in development work and no injury can result to the Government in allowing such development to continue, it is recommended that the contest be dismissed."

There is no evidence in the record showing that large or small sums of money were expended in placer-development work.

The recommendation you make is directly contrary to the rules of practice, the decisions of this department, and the decisions of the Supreme Court of the United States, in Cameron *v.* The United States (252 U. S. 450).

In contests, whether between private individuals or the Government and an individual, when contestant appears at the time and place and submits his evidence and the contestee fails or refuses to submit evidence, the contestant is entitled to a judgment in his favor. The Supreme Court in the case cited definitely held that the Secretary of the Interior has power to proceed against mining locations and determine their validity or invalidity and need not await the filing of an application for patent.

To comply with your recommendation would defeat the purpose of the hearing and amount to the office disregarding the proclamation of the President and the laws of Congress withdrawing the land from the public domain and creating the national park.

It is clear from a careful review of the entire record that your handling of the case has been so erroneous as to indicate a disposition on your part to ignore the applicable laws or that you are wholly unfamiliar with the procedure to be observed in such cases.

As the evidence shows that no discovery was made on any one of the so-called locations and that the land embraced therein is nonmineral in character, the locations were null and void and the lands are part of the national park. It is so held.

Advise the parties.

Very respectfully, WILLIAM SPRY, *Commissioner.*

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona.

The amendment was rejected.

Mr. SMITH. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. SMITH. Mr. Chairman, the progress and development of the country now embraced within the United States involves a story of romance which is probably not equaled in the history of any other country on the globe. From time immemorial a certain portion of mankind has been restless and adventurous, and the trend of the population to the westward since the discovery of the North American continent may be divided into four eras.

For three centuries after the first visit of Christopher Columbus, and until the war of the Revolution, there was a constant, although not rapid, movement of the people from Europe to the eastern shores of North America, which may be called the first era of the colonization of this country.

At the beginning of the Revolution there were only about 5,500,000 people living in what is now the United States, and they were congregated along the eastern shores and in the valleys where, because of lack of any other transportation than water, they naturally made their homes. They were a

staid and conservative people, following closely the customs of the countries from which they came, and were apparently well satisfied with their surroundings. Not until the trappers and missionaries who had ventured across the Allegheny Mountains brought back stories of the rich valleys, navigable rivers, and the wonderful timber and mineral resources, did the more restless and ambitious migrate into that vast area between Lake Erie and the Gulf of Mexico which section met the needs of the settlers until about 1860. This period may be termed the second era of colonization.

The third era begun after the Civil War, when the disbanded armies of the North and South, taking advantage of the homestead law which had been enacted by Congress in 1862, entered the land in the Mississippi Valley, and the plateau States upon the public domain.

The fourth era of colonization commenced the latter part of the nineteenth century when the rugged and venturous pioneers pushed farther west into the Rocky Mountain section. They soon discovered that on account of the lack of moisture it was impossible to successfully till the soil, and while they were dismayed, they were not baffled or disheartened. They began to dam the rivers and to build reservoirs in the canyons to conserve the water to be placed upon the fertile desert lands, which effort brought quick reward in the way of bounteous crops. Many small irrigation projects were initiated and the population of the arid West rapidly increased. The Congress, which has always been on the alert to aid in developing the various resources on the public domain, looked with favor on plans which had been advocated by the Senators and Representatives from the West, and approved by President Roosevelt, to secure Federal aid in building projects which were too stupendous and expensive for private enterprise. As a result the Federal reclamation act was placed upon our statute books, which provided for the creation of a fund from the annual receipts of the sale of public lands, oil leases, and permits which should be used in the construction of irrigation projects in the public-land States in the arid region. The Government entered upon this new and untried policy of reclaiming arid lands, which gave promise of great success. A splendid organization of skilled engineers was formed, and they entered upon their work with great enthusiasm. Like all new ventures, much had to be learned from experience, and it is easy now, after the lapse of 20 years, to point out the mistakes which have prevented the reclamation policy from being the great success that its advocates had hoped for. Although the fund at the beginning was comparatively small, the Secretary of the Interior who, under the law, then had authority to determine what projects should be undertaken, found himself confronted with demands from the Senators and Representatives from every arid State to start at least one project in their State.

The Secretary finally yielded to their importunities and a score or more projects were started, many against the advice of the engineers, which made it impossible, because of lack of funds, to make rapid progress in the construction of any particular project. As a result, instead of the completion of any projects, the largest of which could doubtless have been completed within two or three years, construction work has been continued over a period, on most projects, of at least 10 years.

Another costly mistake which was made and which has interfered greatly with the success of the reclamation policy was permitting settlers to enter lands in advance which were designated for reclamation and refusing to give them leave of absence until the project was built, except at the risk of losing their land by contest.

Thousands of settlers went upon these dry lands, established their homes, and attempted to comply with the homestead law, although there was no water available for even domestic purposes, in some instances, within 20 miles. The resulting hardship and expense suffered by the settlers not only brought financial disaster, but in many instances the settlers gave up their claims, broken in health, and some were driven insane by exposure and lack of proper food and water.

Another mistake was made when the department imposed upon the engineers the responsibility of making collections from the settlers. This function should have been placed upon an officer whose sole duty it should have been to look after the repayment of construction and operation and maintenance charges, to the reclamation fund, and permit the engineers to give all their time and thought to construction work. Because of this weakness in the organization, many delinquencies occurred which could have been avoided.

Still another mistake which has interfered so much with the success of the reclamation policy was in not requiring the settlers to organize into irrigation districts, so that the Government might deal directly with the districts through their duly elected officers instead of requiring the Reclamation Service to keep an individual account with every settler. If this policy had been adopted, there would not have been the delay and confusion in making collections, as the more prosperous settlers would have aided those who needed financial help in order to meet the obligations of the district promptly.

The settlers, as well as the Reclamation Service, have been greatly handicapped in their operations because of the increased cost of labor and the increased cost of material during the last 10 years, and this has resulted in great discouragement to the settlers and is the cause of many delinquent accounts. When the projects were started, the estimated cost was based on the then prevailing wages paid to engineers, artisans, and for labor, and the prevailing prices for building materials. Constantly increasing cost of labor and material has added at least 50 per cent to the estimated cost of the project, so that the settlers are confronted with the necessity of paying twice as much for construction charges as they had anticipated.

All of these unfortunate circumstances made it necessary for Congress to come to the relief of the settlers, and in 1914, the period within which payments were to be completed, was extended from 10 to 20 years. Notwithstanding this concession by the Congress, the depressed condition of agriculture, the high cost of operation and maintenance, the necessity for the settlers, in order to save their farms, to borrow money from banks and loan companies at a high rate of interest, their financial embarrassment was so great as to impel Congress to look with favor upon further relief legislation in 1922–1924.

When the present Secretary of the Interior, Doctor Work, came into office March 4, 1923, he found the spirit of the settlers at the lowest ebb. He at once undertook a survey with the hope of securing from disinterested parties information regarding the actual conditions on the various reclamation projects. He appointed five distinguished men versed in reclamation matters to visit the projects and ascertain the financial status of each; to familiarize themselves with the problems of the settlers; and make a report of their observations and investigations. After nearly one year of study their views were incorporated in a report to the Secretary of the Interior, which he laid before the President, who transmitted the report to Congress, on which was based the act of December 5, 1924, known as the "Fact Finders' Law."

No Secretary of the Interior has been more industrious and energetic in endeavoring to adjust the difficulties encountered by the settlers on Government projects than the present Secretary, who has at great discomfort personally visited most of the projects once, and some of them three times, during the last two years to secure first-hand information.

The Commissioner of Reclamation, Doctor Mead, has probably had wider experience in reclamation of the arid lands and the colonization of settlers than any other person in the country, and we all recognize that both these officers have given prolonged study to the vexed problems confronting the settlers and the Reclamation Service and are earnestly striving to find a solution. Both of them have spent the greater part of their lives in the West and are sympathetic with the efforts of the settlers to develop their farms, and recognize as much as anyone can the absolute necessity of developing the agricultural resources of the West if the arid States are to continue to progress.

The opinion seems to be abroad that the reclamation policy is a failure, when as a matter of fact more has been accomplished toward creating national wealth in the building of towns and cities and in the making of happy homes for thousands of people than any other undertaking which has had governmental supervision.

There has been expended by the Secretary of the Interior in the construction of reclamation projects $145,000,000 from the receipts from the sale of public lands, leases on oil lands, permits, and so forth, and $60,000,000 from repayments by settlers of construction charges on the various irrigation projects, water rentals, and so forth.

It is estimated that the national wealth created by this expenditure and development amounts at least to $600,000,000. Many towns and cities have been built on the irrigation projects, and over 40,000 families have found homes on the lands and in these various communities. A census shows that on these various projects there are nearly 1,000 schools, 650 churches, and 225 banks, none of which would be in existence except for the Government's aid in reclamation. The value of

the crops in one year on some projects amounted to more than the entire cost of the project.

Statistics disclose that the value of the crops on all Government reclamation projects during the current year will amount to over $110,000,000. While it is true that from $10,000,000 to $20,000,000 of the amount expended may not be returned to the reclamation fund, the great progress that has been made, as above indicated, justifies the Government in its reclamation policy and shows the wisdom of Congress in enacting the reclamation law. The great possibilities in the future, in view of past accomplishments, certainly warrant the continuation of the reclamation policy.

Many of those living east of the public-land States are under the impression that the reclamation policy benefits only the people on the land or those living in the immediate vicinity. As a matter of fact, reclamation is a national and not a local question, for there has been created on these projects a market for the manufactured products of the East, which amount annually to at least $500,000,000. In one year the value of commodities shipped from the industrial centers of the East to one project amounted to $34,000,000, while this project shipped to the various sections of the country in one year 67,000 carloads of products valued at $40,000,000.

The amount received in income and other taxes by the Federal Government from residents on these projects will amount annually to as much as has been expended from the reclamation fund, so that as a business proposition the Government has made a wonderful financial investment, and in addition has made it possible for half a million people to secure homes and a livelihood as a result of expenditures under the reclamation policy. This wonderful showing certainly warrants the Government in continuing appropriations from the reclamation fund to complete existing projects, and to undertake new projects when they are proved to be feasible from an engineering and economic standpoint.

The benefits which have accrued to the people and our country as a result of the reclamation policy are well stated in the splendid address delivered by Dr. Elwood Mead, Commissioner of Reclamation, who is known nationally and internationally as the highest authority on reclamation and colonization work, October 26, 1925, in Chicago before the Western Society of Civil Engineers, from which I quote:

> Western irrigation areas are now our main source of long-staple cotton. Millions of dollars which now go to the irrigation farmers of Texas, Arizona, and California would, without Federal reclamation, go abroad to the cotton growers of Egypt. Without the local fodder crops of irrigated farms, the range livestock industry of the arid West would collapse. These Federal projects have given an economic support to cities that sorely needed it. They have increased the business of transcontinental railroads, furnished markets for the products of factories, and contributed far more to the economic strength of this country than is realized in the humid sections of the country.

Of the $205,000,000 which has been spent in the construction and operation of irrigation projects, the loss to the fund because of mistakes which have been made in the location of projects, or on account of delinquent payments or abandoned farms, will amount to only about 10 per cent; certainly not more than 15 per cent. This proportion of loss from an expenditure of $205,000,000 can not be regarded as excessive in view of the profits which have accrued to the people who reside on these projects, and the creation of taxable property worth three times the total amount expended.

If comparisons should be made of the amounts expended and the resulting benefits in carrying forward other Government enterprises, it would be disclosed that the loss to the reclamation fund, to which reference is so frequently made, is exceedingly small. The Alaskan Railroad, which has cost the Government $73,000,000, serves only a few thousand people. In fact, there are less than 28,000 white people in the whole of Alaska. The deficit from operating the railroad in Alaska has been over $1,000,000 annually for the last four years, but the abandonment of the railroad is not seriously considered.

When the national forest policy was established 20 years ago, its advocates gave assurances that the receipts from timber sales, grazing permits, and so forth, would make the National Forest Service self-sustaining, and yet $201,499,736 have been expended—an average of $10,000,000 each year—while the receipts have been only $66,715,609.67. But everyone recognizes the importance to the West and to the country as a whole of the splendid national forest policy which the Government is sustaining. The policy of the conservation of the water in our streams in the arid West and its application to the desert lands is certainly of no less importance to the people of this country than the timber resources.

The expense of maintaining the national parks in the West as a playground for the people in excess of receipts amounts to $3,000,000 annually. No one suggests that the national park policy is a mistake because it is not self-sustaining; but should we not be equally concerned in a policy which enables those in moderate circumstances to secure farm homes on the desert and create enormous national wealth from land that is valueless without water?

During the last 10 years $461,045,000 have been expended for river and harbor improvements, probably 25 per cent of which has been wasted on projects which were not feasible, and many of which have been entirely abandoned. Notwithstanding these failures, we are making appropriations annually for the continuation of the improvement of the rivers and harbors throughout the country in the interest of our country's commerce, although $1,366,373,518 has been expended for those improvements since the Government was formed, none of which has been directly returned to the Federal Treasury.

With reference to the possible lack of demand for the land embraced in new projects, it is true that during the last five years, because of the high wages prevailing in the industrial centers in the building trades, on railroads, and in other industrial activities, coupled with the low price of farm products, there has been a movement of people from the farms to the cities and towns, where they are able to secure employment on a daily or monthly wage. In view of the fact, however, that the cost of living has greatly increased, there is now every reason to believe that many people who are working for wages will again turn their attention to agricultural pursuits, especially as land can be procured at a much lower price than a few years ago.

The future for reclamation is much brighter since the passage of the act of December 5, 1924, known as the fact finders' law. This splendid law offers great encouragement to the settlers on existing projects, as well as to those who are desirous of locating on contemplated projects. It will enable the settlers who are delinquent in their payments to save their farms and make a new start, for under this law the accumulated charges, including interest, will be absorbed in the construction costs. The time of payment has been extended so as to make the annual payments so small that they will amount in some instances to less per acre than the operation and maintenance charges. Because of this law the morale of the farmers has been improved, and we have every reason to believe that even on the most unfavorable project they will be able to meet their payments regularly in the future.

Under the provisions of the new law only those who can qualify as to industry, experience, character, and capital will be able to secure entry upon a reclamation project, and the failure of settlers, as in the past, who entered the land without capital or experience will not be duplicated.

Another wise provision of this law provides that no project shall be undertaken until after the most careful investigation has been made, under the direction of the Secretary of the Interior, regarding the water supply, the cost of development, the character of the soil, and the probability of early settlement. There are many other good features of the law which might be enumerated.

The increased price of farm products is attracting more and more people to the farm, and there is good reason to believe that the increasing demand for land will continue. According to the best authorities the future for agriculture is very bright, and it is plainly the duty of the Government to continue the reclamation policy and make its holdings on the public domain available to those who desire farm homes by conserving the water now going to waste and placing it upon the fertile arid lands. The constant and rapid increase of the population makes the question of an ample food supply in the years to come one of great concern.

On the whole, the reclamation policy has been a wonderful success, and while mistakes have been made and some losses have occurred, the wisdom of the enactment of the reclamation law has been overwhelmingly vindicated, and we will realize even more largely than in the past the vision of those splendid men who were responsible for its inception. They have accomplished wonders in an untried field, and the great dams scattered over the arid-land States are monuments to their initiative, as well as to the skill of the engineers who planned and constructed them; just as the thousands of splendid farms, beautiful towns and cities, fine roads, and attractive homes stand as monuments to the industry and fortitude of the

splendid men and women who, through toil, hardships, and deprivation, carved them all out of the desert.

By utilizing the experience of the past 20 years mistakes will be avoided in the future and our dreams for continued development of our arid lands will come true; which will redound to the continued happiness and prosperity of the whole Nation.

Mr. CRAMTON. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. BURTON, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 6707, the Interior Department appropriation bill, and had come to no resolution thereon.

CONTESTED ELECTION CASE, SIROVICH V. PERLMAN

Mr. COLTON. Mr. Speaker, I offer the following privileged resolution, which I send to the desk.

The Clerk read as follows:

House Resolution 81

Resolved, That John H. Voorhis, Charles Heydt, James Kane, and Jacob Livingston, constituting the board of elections of the city of New York, State of New York, their deputies or representatives be, and they are hereby, ordered to appear by one of the members, the deputy or representative, before Elections Committee No. 1 of the House of Representatives forthwith, then and there to testify before said committee or a subcommittee thereof in the contested election case of William I. Sirovich, contestant, *v.* Nathan D. Perlman, contestee, now pending before said committee for investigation and report; and that said board of elections bring with them all the disputed ballots, marked as exhibits, cast in every election district at the general election held in the fourteenth congressional district of the State of New York on November 4, 1924. That said ballots be brought to be examined and counted by and under the authority of said Committee on Elections in said case, and to that end that the proper subpœna be issued to the Sergeant at Arms of this House, commanding him to summon said board of elections, a member thereof, or its deputy or representative, to appear with such ballots as a witness in said case; and that the expense of said witness or witnesses, and all other expenses under this resolution, shall be paid out of the contingent fund of the House; and that said committee be, and hereby is, empowered to send for all other persons or papers as it may find necessary for the proper determination of said controversy; and also be, and it is, empowered to select a subcommittee to take the evidence and count said ballots or votes and report same to Committee on Elections No. 1, under such regulations as shall be prescribed for that purpose; and that the aforesaid expense be paid on the requisition of the chairman of said committee after the auditing and allowances thereof by said Committee on Elections No. 1.

Mr. OLDFIELD. Mr. Speaker, has this resolution the indorsement of the full Committee on Elections No. 1?

Mr. COLTON. It has, with the exception of one member of the committee, who is absent, the gentleman from Maine [Mr. BEEDY].

Mr. OLDFIELD. The Democratic members of the committee understand about it?

Mr. COLTON. They were all present, and the committee voted unanimously for the adoption of the resolution.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

ANDREW B. CHALMERS AND WALTER F. BROWN

Mr. CHALMERS. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to correct some false statements made in the CONGRESSIONAL RECORD on January 6, 1925.

The SPEAKER. The gentleman from Ohio asks unanimous consent to extend his remarks in the RECORD. Is there objection?

Mr. OLDFIELD. Are they the gentleman's own remarks.

Mr. CHALMERS. Yes.

The SPEAKER. Is there objection?

There was no objection.

Mr. CHALMERS. Mr. Speaker, I wish the Members of this House could understand how distasteful this duty I am now performing is to me and how I dislike, when he is gone, to call attention to the untruths and misstatements made by my predecessor in the extension of his remarks found in the RECORD of the Sixty-eighth Congress, January 6, 1925.

However, much as I dislike to perform this task, my sense of justice and truth compels me to correct the RECORD and clear the names of Walter F. Brown and Andrew B. Chalmers of this political slander. I call it political slander, because it was deliberately fabricated to influence votes in the congressional elections of 1922. They filed a petition in court, written up as campaign propaganda. This petition had not one element of truth in it. When the campaign was over they went into court, paid the costs, and asked that the case be dismissed. It was dismissed.

Then again in the congressional elections of 1924 they printed tens of thousands of copies of this false petition and mailed them all over the district. They misjudged the intelligence of the voters in the ninth Ohio district when they thought they could be influenced by such political slander. What answer did the voters give these calumnies? I was elected to the Sixty-ninth Congress by the largest vote ever cast for a Congressman in my district.

Whom do I mean by "they"? I mean his campaign committee and advisers, because ex-Congressman Sherwood was not himself at the time these things were done. He had been failing physically and mentally for some time. He was subject to poor advice. If his wise and respected wife had been living, he never would have done this. Kate Brownlee Sherwood helped to direct his political fortunes while she lived and helped plan and execute many a successful campaign.

Mrs. Sherwood and I worked side by side in educational work in Toledo for seven years. During that time I was superintendent of the Toledo public schools and executive director of the University Extension Society of the county. All of that time Mrs. Sherwood was secretary of the university extension work. When I resigned as superintendent of schools to enter business, Mrs. Isaac R. Sherwood wrote me officially as follows:

TOLEDO CENTER UNIVERSITY EXTENSION,
Toledo, Ohio, June 26, 1905.

W. W. CHALMERS,
Chairman Extension Course, Toledo Center U. E., Toledo, Ohio.

DEAR FRIEND: The Toledo Center University Extension would express their appreciation of your interest and cooperation in university extension while serving as superintendent of instruction of the Toledo public schools.

When in 1899 we became associated in the work of the proposed centennial, you were the chairman of the committee on education of the centennial association, and when we reorganized for the work of university extension it was upon your recommendation that the Toledo board of education passed the resolution whereby, since that time, there has been a coordination of university extension with the public schools.

For this and your steadfast cooperation in this important educational work, we thank you and would thus place ourselves on record.

Yours very truly,

W. C. CHAPMAN, *President.*
KATE BROWNLEE SHERWOOD, *Secretary.*

What are the facts about this ill-advised attack on Andrew B. Chalmers and Walter F. Brown?

Andrew B. Chalmers was a legal resident of Michigan, owned and operated a farm there preceding the selective draft of the World War. The Army records will show that he did not ask for deferred selection because of the fact that he was a farmer, but that he waived his privilege under classification 4 and asked to be called first. He did not wait to be drafted, but volunteered and was enrolled in the Air Service. He hoped to join my namesake and become an American ace overseas. The fact that he was not fortunate enough to see service overseas ought not to be laid at his door, because he was under military orders from the time he volunteered until two months after the armistice was signed, when he was honorably discharged from the Army with his service record marked "Excellent."

The result of this damnable slander for political advantage has not helped them politically, but I think has hurt their party. It has, however, hurt the boy. He gladly offered his service, and his life, if necessary, and was rewarded by this contemptible attack in the CONGRESSIONAL RECORD. It did not, as they hoped, get them votes, though it caused the boy's mother many sleepless and tearful nights.

She had kissed her only son good-bye, believing that in the Air Service overseas she had not one chance in ten of his ever coming back to her. Then, when God, in His mercy, did answer her prayers, and her boy was spared, she had to stand by and see his good name splattered with mud and her heart smashed in an attempt of a campaign committee to get votes to send some one back to Congress.

Mr. Speaker and my colleagues, I can not talk any more on this subject. I see "Red" whenever I think of it and wish we were back in the days when we could settle these cruel things man to man.

Let me turn to the wrong done to one of our best-known citizens, Walter F. Brown, in the same issue of the CONGRESSIONAL RECORD, that of January 6, 1925. I use "best-known American citizen" advisedly because he is all that. He is respected and honored by all who know him. He is an able, honest, upright man. He is the best friend of the homeless, parentless boys and girls of his home town. He has been especially honored by several Presidents of the United States. He was the personal friend and political adviser of one of America's greatest Presidents, Theodore Roosevelt.

He is the only man who has ever represented a President of the United States as chairman of a joint congressional committee. He was the personal representative of President Harding and President Coolidge, as Chairman of the Reorganization Committee of Congress. His committee made a report that has not yet been adopted but which in time will be adopted and will go down in history as the greatest advancement in governmental economy and efficiency in our age. You, Mr. Speaker, through your friendship for him and your personal knowledge, know him to be one of America's leading citizens.

The only time he has ever consented to allow his name to be placed on the ballot for any public office he was overwhelmingly elected by the voters in his district.

He is now chairman of the Republican executive committee of Lucas County, Ohio, and as such chairman he has conducted a good many successful campaigns. I am sure he will conduct a good many more successful political battles. His leadership is effective because he is honest and fair. He is an idealist. His campaigns are planned and executed on the highest level.

Ex-Congressman Sherwood places in the RECORD the statement that Mr. Brown spent some $75,000 over and above the legal amount of the corrupt practices act to defeat his reelection in Congress. That would mean that he spent over $80,000 in the congressional campaign of 1924. Now, what are the facts? It would be so easy to print the exact facts. They are a matter of public record. Mr. Brown's committee spent for my election $1,195.78. I spent $500. This makes a total congressional campaign fund of $1,695.78 in this 1924 campaign.

Mr. Speaker, please bear in mind, I do not lay the blame of these false statements and this great wrong, made of public record, done to two upright, honest citizens at the door of ex-Congressman Sherwood, but I do blame the political brigands who surrounded him and directed him during his last two political campaigns. I make this statement with great reluctance solely that the slanders concerning two of my fellow citizens, made and spread upon the permanent records of Congress by my predecessor, may stand corrected.

COMMITTEE ON THE CIVIL SERVICE—LEAVE TO SIT DURING SESSIONS OF THE HOUSE

Mr. LEHLBACH. Mr. Speaker, I ask unanimous consent that the Committee on the Civil Service be permitted to sit during the sessions of the House.

The SPEAKER. Is there objection?

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to Mr. BELL, for 10 days, on account of important business.

RESIGNATIONS FROM COMMITTEES

The SPEAKER laid before the House the following communication, which was read:

JANUARY 9, 1926.

To the SPEAKER HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. SPEAKER: Respectfully I place in your hands my resignation as a member of the Committee on Public Lands of the House of Representatives.

I am a member of the Committee on Merchant Marine, and also of the Committee on Irrigation and Reclamation, and I wish particularly to make a study of the reorganization problems connected with the Shipping Board and the Emergency Fleet Corporation; and I believe that the addition of the third committee will interfere with the amount of work I would like to do upon the other two committees.

Yours faithfully,

F. M. DAVENPORT.

The SPEAKER. Without objection, the resignation will be accepted.

There was no objection.

Also the following communication, which was read:

JANUARY 8, 1926.

Hon. NICHOLAS LONGWORTH,
Speaker of the House of Representatives,
Washington, D. C.

MY DEAR MR. SPEAKER: I hereby tender my resignation as a member of Committee on Elections No. 2 of the House of Representatives.

Yours very truly,

ROBERT LUCE.

The SPEAKER. Without objection, the resignation will be accepted.

There was no objection.

COMMITTEE APPOINTMENTS

Mr. TILSON. Mr. Speaker, I offer the following resolution, which I send to the desk.

The Clerk read as follows:

House Resolution 82

Resolved, That the following Members be, and they are hereby, elected members of the following-named standing committees of the House, to wit:

Fletcher Hale, of New Hampshire, Committee on Elections No. 2; Charles L. Gifford, of Massachusetts, Committee on the Public Lands.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

STATE RIGHTS

Mr. HILL of Maryland. Mr. Speaker, I ask unanimous consent to extend in the RECORD my own remarks by printing therein an article which I wrote for the North American Review on the subject of State rights.

The SPEAKER. Is there objection?

There was no objection.

Mr. HILL of Maryland. Mr. Speaker, "State rights" has become to-day a very important political question. The proposed child labor amendment, the question of Federal marriage and divorce laws, agitation for the establishment of Federal control over the education of the youth of all the States, has followed the extension of Federal jurisdiction over State liquor laws.

In his recent message at the opening of this Congress President Coolidge said:

> The functions which the Congress are to discharge are not those of local government, but of National Government. The greatest solicitude should be exercised to prevent any encroachment upon the rights of the States or their various political subdivisions. Local self-government is one of our most precious possessions. It is the greatest contributing factor to the stability, strength, liberty, and progress of the Nation. It ought not to be infringed by assault or undermined by purchase. It ought not to abdicate its power through weakness or resign its authority through favor. It does not at all follow that because abuses exist it is the concern of the Federal Government to attempt their reform.
>
> Society is in much more danger from encumbering the National Government beyond its wisdom to comprehend, or its ability to administer, than from leaving the local communities to bear their own burdens and remedy their own evils. Our local habit and custom is so strong, our variety of race and creed is so great, the Federal authority is so tenuous, that the area within which it can function successfully is very limited. The wiser policy is to leave the localities, so far as we can, possessed of their own sources of revenue and charged with their own obligations.

In the June issue of the North American Review I discussed the general question with which the President so clearly and forcefully deals in his message. I discussed this under the title of "A State rights remedy for Volsteadism," and by consent of the House I am offering the considerations in this article for the perusal of the House, as follows:

> The Constitution of the United States was framed and adopted on the theory that all matters of personal rights and obligations were to be regulated by the individual States, while the Federal Government was given certain definitely specified functions to perform for those interests which were common to all the States and to all of the people who lived in those local units of self-government, and collectively constituted "the people of the United States." No language could be more explicit than that of the Constitution securing to the people of the various States entire control of personal dress, food, religion, education, and other matters relating to personal conduct.

The people of the several States differed quite radically in their personal habits and points of view. The people of Massachusetts were Calvinistic in religion and preferred rum as a beverage, while the people of Virginia were mostly of the Church of England and preferred Madeira or some other wine more suited to a warmer climate than the rum of the cold North. Their local points of view were different, and naturally so; yet, by the Constitution, they could all live as they pleased in their own communities and still be Americans.

Massachusetts had the right to prohibit the Puritan faith or the use of Medford rum in its borders if it desired, and Virginia had an equal right to adopt the doctrine of infant damnation and to prohibit all alcoholic beverages in its limits. If either State did so, the people who dissented from the new laws could go to another State and still remain Americans. If, however, the Federal Government had the power to prohibit Calvin's creed or Cana's wine, those who dissented must renounce their personal liberty in that regard or else leave the United States. Under the safeguards of the Constitution there was room for all creeds and personal inclinations. From 1789 till 1919 this theory of government prevailed, and the Nation was honestly governed, while its people were prosperous and content. Nobody in Maryland objected to the prohibition of wine and beer in Kansas any more than the people of Maine objected to the preference showed by the people of Louisiana for French cooking. After 130 years of content, however, there came into the Constitution a new theory of government called national prohibition.

On December 8, 1922, President Harding said to Congress: "There are conditions relating to the enforcement of prohibition which savor of nation-wide scandal. It is the most demoralizing factor in our political life." The President also referred to "men who are rending the moral fiber of the Republic through easy contempt for the prohibition laws." To-day the eighteenth amendment has been on the books for over five years. What is the situation on the liquor question, the old question which has been with man since Noah rejoiced in his vineyard in celebration of his liberation from the dryness of the Ark? Does "easy contempt" for the prohibition laws still rend the moral fiber of the Republic, or is it possible that prohibition may yet fulfill the dreams of the people who sought temperance in drinks as in all else?

There are three important dates in the prohibition calendar—December, 1917, January, 1919, and October, 1919. In order to understand the injection, after 130 years of good government, of a new theory of Federal control of local police power, we must note conditions in 1917 and to-day.

December 17, 1917, was a memorable day both at home and abroad. On that day a German raid in the North Sea destroyed a convoyed merchant fleet—one British and five neutral ships. On that day, such was our excitement, the U. S. submarine *F–3* rammed and sank the U. S. submarine *F–1* in American waters and 19 lives were lost. On that day the Congress of the United States proposed to the war-absorbed legislatures of the various States the eighteenth amendment to the Constitution of the United States. Before the war the best, or from the prohibitionist point of view, the worst beer came from Germany. The brewers who made beer here and sold it in the saloons were alleged mostly to be German. In the House and the Senate in the debates on the eighteenth amendment, frequent references were made to the German extraction of American producers of beer. On December 17, 1917, the mind of Americans was on German raids on the merchant fleets, not on Anti-Saloon League raids on the American Constitution.

So, on December 17, 1917, a new theory in American government was proposed, just 130 years after Senator Maclay, of Pennsylvania, had voted against the Federal judiciary bill, which created for the first time a system of Federal courts, judges, clerks, marshals, jurors, prosecuting attorneys, jails, and penitentiaries for exclusively Federal purposes but entirely separate and different from the machinery of law enforcement existing in each of the several States for their own laws.

Senator Maclay fought this bill because he thought it proposed "a vile law system, calculated for expense and with a design to draw by degrees all law business into the Federal courts." He then expressed an opinion which, as late as 1916, was smiled at by students of American government, but which to-day makes thoughtful men very grave. Senator Maclay added: "The Constitution is meant to swallow all the State constitutions by degrees, and thus to swallow by degrees all the State judiciaries."

The manufacture, sale, and transportation of intoxicating liquors before the eighteenth amendment had been considered as much a matter for exclusive State control as was the manufacture, sale, and transportation of beef, or bread, or ginger ale. By the eighteenth amendment, however, the Federal Government selected one out of many vital local police questions and assumed to enforce laws that contained in them no scintilla of interstate and therefore of Federal interest. If a State really wanted to do away with any form of beverages, it had full power to do so, for a State could not legally be invaded by any liquor outlawed by that State. The Webb-Kenyon act had so decreed, and the Federal Government had properly assumed the duty of protecting a prohibition State from having its laws violated by outsiders. The proponents of the eighteenth amendment, however, feared the intrastate dissenters more than they did the interstate violators, and so they proposed that the Federal Government should enter the local police field on a new venture.

The eighteenth amendment was declared part of the Constitution in January, 1919. The minds of the American people were still centered on the war in Europe, the peace conference had not yet settled to its work, and our troops were still abroad. The Volstead Act was passed over the veto of President Wilson and became a law on October 28, 1919. The Volstead Act has therefore been in force over five years. What are the admitted results?

The annual reports of the Commissioner of Internal Revenue show that in 1919 there were 3,487 illicit distilleries and distilling apparatuses seized by Federal prohibition directors and general prohibition agents during the fiscal year ending June 30. It might be expected that this new law would take some time to become effective, and in 1922 we find that the number of illicit distilleries and distilling apparatuses so seized was 95,933. We should expect, however, that the number of such seizures would thereafter decline. However, in 1923, there were 158,132 illicit distilleries and distilling apparatuses seized in the United States, and in 1924 this number had increased to 159,176. The effect, therefore, of the Volstead act and national prohibition upon illicit distilleries and distilling apparatuses, was to increase the seizures from less than 4,000 to nearly 160,000 in five years.

The annual reports of the Commissioner of Internal Revenue also show arrests by Federal prohibition directors and general prohibition agents which are very significant. In 1921 there were 34,175 such arrests. The following four years this number doubled, and in 1924 there were 68,161 arrests. In those years of the Volstead Act arrests had increased 100 per cent. The greatest number of seizures of the above illicit distilleries and distilling apparatuses were made in States which had local prohibition laws before the adoption of the eighteenth amendment and the Volstead Act.

What is the effect of prohibition on general crime increase? To-day the Leavenworth and Atlanta prisons, both Federal penitentiaries, are so overcrowded that they are caring for several hundred convicts above the institutions' facilities. There are about 3,200 now in Leavenworth and 3,023 in Atlanta. Temporary dormitories for the two prisons probably will have to be provided in the industrial shops. Apparently, the experiment of national regulation of local beverages and habits has been a failure and has brought with it increase rather than decrease in general crime. What is the remedy?

The eighteenth amendment is fundamentally improper, but the Federal Government should, with all of its powers and facilities, prevent outside infringement of the liquor laws or any other local laws of any State. The Federal Government should have power to do what it attempted to do by the Webb-Kenyon Act, which was intended to prevent transportation into any State of any beverages forbidden by the laws of that State. The protection of the States in their local self-government is a proper function of the Federal Government, but further than this it should not go.

The eighteenth amendment is therefore fundamentally wrong, and it should be repealed; but such repeal is difficult. The fourteenth and fifteenth amendments are nullified by common consent. If the eighteenth amendment is not repealed it will be nullified in certain portions of the United States by the common consent of the people in those communities, or else its interpretation must be brought into accord with the prevailing sentiment in such local communities.

The Volstead Act is inherently dishonest. It establishes a definition for "intoxicating liquors" which is artificial and untrue. It prohibits beer with one-half of 1 per cent of alcohol, but permits cider and home-made wine with as much alcohol in them as the individual jury may consider nonintoxicating in fact. When the eighteenth amendment prohibited the manufacture, sale, or transportation of intoxicating liquors, it prohibited the manufacture, sale, or transportation of an indefinite thing. The eighteenth amendment did not say what constituted "intoxicating." That duty, in accordance with the decisions of the Supreme Court of the United States, was left to the Congress. Congress may make any definition which the people of the country desire, and the Supreme Court will sustain such definition. As a matter of fundamental government, however, I should prefer to see Congress delegate to the various States the power to defining the word "intoxicating," such definition to be necessarily subject to review by the Supreme Court.

In 1914 I advised the American Express Co. that the Webb-Kenyon Act was constitutional and that it should not ship liquor into West Virginia. As a result of this opinion, a case was made and the constitutionality of the Webb-Kenyon Act was tested in the Supreme Court. It has become apparent that the Federal Government can not enforce the Volstead Act within the States, and gradually the Federal Government is retiring from intrastate enforcement and attempting

to protect the States from liquor invasions from the outside. I should like to see the eighteenth amendment repealed, power being retained by the Congress to protect the States from outside interference with their local laws, but while the eighteenth amendment is part of the Constitution I feel that there might be a substitute for the Volstead Act which would greatly improve the existing situation.

Repeal the Volstead Act and enact the following:

"SECTION 1. Each State shall for itself define the meaning of the words "intoxicating liquors" as used in section 1 of Article XVIII of the amendments to the Constitution of the United States, and each State shall itself enforce within its own limits its own laws on this subject.

"SEC. 2. Any person who transports or causes to be transported into any State any beverage prohibited by such State as being an "intoxicating liquor" shall be punished by the United States by imprisonment for not more than 10 years or by a fine of not less than $10,000 nor more than $100,000, or by both such fine and imprisonment."

The first section of this proposed enforcement act is based on the theory of local option; the second section is based on the Webb-Kenyon Act, by which the United States guarantees the States from outside interference. The proposed substitute, taken as a whole, permits concurrent action each in their own sphere by the United States and by the individual States to carry out the provisions of the eighteenth amendment.

The Volstead Act is certain to be modified. The eighteenth amendment, in the minds of the majority of the American people, was never intended to apply to wine, beer, and cider, and by the adoption of such a law as I have proposed, those States which wish such beverages may obtain them legally even while the eighteenth amendment remains part of the Constitution.

On December 7, 1925, the day this Congress assembled, following the State-rights theory above discussed, I introduced the following bill:

IN THE HOUSE OF REPRESENTATIVES,
December 7, 1925,

Mr. HILL of Maryland introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A bill (H. R. 67) to amend the national prohibition act, to provide for State local option, and for other purposes.

Be it enacted, etc., That Title II, section 1, of the national prohibition act is hereby amended by the addition of the following:

"SECTION 1. Each State shall for itself define the meaning of the words 'intoxicating liquors' as used in section 1 of Article XVIII of the amendments to the Constitution of the United States, and each State shall itself enforce within its own limits its own laws on this subject.

"SEC. 2. Any person who transports or causes to be transported into any State any beverage prohibited by such State as being an 'intoxicating liquor' shall be punished by the United States by imprisonment for not more than 10 years or by a fine of not less than $10,000 nor more than $100,000, or by both such fine and imprisonment."

SEC. 2. All portions of the national prohibition act inconsistent herewith are hereby repealed.

The President said in his message:

It does not follow because abuses exist, it is the concern of the Federal Government to attempt their reform.

The President stands for the Washington-Lincoln theory of American Government, and I submit the above bill for consideration on the State-rights theory. [Applause.]

ADJOURNMENT

Mr. CRAMTON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 4 o'clock and 59 minutes p. m.) the House adjourned until Monday, January 11, 1926, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

264. A letter from the Secretary of War, transmitting with a letter from the Chief of Engineers, report on preliminary examination of Port Angeles Harbor, Wash.; to the Committee on Rivers and Harbors.

265. A letter from the Secretary of the Interior, transmitting a report of the withdrawals and restorations contemplated by statute during the period December 1, 1924, to November 30, 1925, inclusive (H. Doc. No. 205); to the Committee on the Public Lands and ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. WHEELER: Committee on Military Affairs. H. R. 949. A bill for the relief of John H. Cowley; without amendment (Rept. No. 73). Referred to the Committee of the Whole House.

Mr. SPEAKS: Committee on Military Affairs. H. R. 1717. A bill for the relief of Alonzo C. Shekell; without amendment (Rept. No. 74). Referred to the Committee of the Whole House.

Mr. SPEAKS: Committee on Military Affairs. H. R. 1827. A bill for the relief of Frank Rector; without amendment (Rept. No. 75). Referred to the Committee of the Whole House.

Mr. JOHNSON of Indiana: Committee on Military Affairs. H. R. 3380. A bill for the relief of Frederick Sparks; without amendment (Rept. No. 76). Referred to the Committee of the Whole House.

Mr. HILL of Alabama: Committee on Military Affairs. H. R. 3546. A bill for the relief of William H. Armstrong; without amendment (Rept. No. 77). Referred to the Committee of the Whole House.

Mr. SPEAKS: Committee on Military Affairs. H. R. 4252. A bill for the relief of Thomas H. Burgess; without amendment (Rept. No. 78). Referred to the Committee of the Whole House.

Mr. WAINWRIGHT: Committee on Military Affairs. H. R. 4585. A bill for the relief of Andrew Cullin; without amendment (Rept. No. 79). Referred to the Committee of the Whole House.

Mr. FISHER: Committee on Military Affairs. H. R. 6874. A bill for the relief of James Madison Brown; without amendment (Rept. No. 80). Referred to the Committee of the Whole House.

Mr. REECE: Committee on Military Affairs. H. R. 7036. A bill for the relief of John R. Anderson; without amendment (Rept. No. 81). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, the Committee on Pensions was discharged from the consideration of the bill (H. R. 5658) granting an increase of pension to Marion A. Hey, and the same was referred to the Committee on Invalid Pensions.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. SCOTT: A bill (H. R. 7245) providing for the consolidation of the functions of the Department of Commerce relating to navigation, to establish load lines for American vessels, and for other purposes; to the Committee on the Merchant Marine and Fisheries.

By Mr. BACON: A bill (H. R. 7246) to amend the second paragraph under the caption "Naturalization service" of an act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1920, approved July 19, 1919 (41 Stat. L. p. 222); to the Committee on Immigration and Naturalization.

By Mr. WEAVER: A bill (H. R. 7247) to amend paragraph 1674 of Title II, section 201 of "An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes," being the tariff act of 1922, approved September 21, 1922; to the Committee on Ways and Means.

By Mr. JOHNSON of South Dakota: A bill (H. R. 7248) to amend the eighth paragraph of section 127a of the national defense act of June 3, 1916, as amended; to the Committee on Military Affairs.

By Mr. HULL of Tennessee: A bill (H. R. 7249) amending the tariff act of 1922; to the Committee on Ways and Means.

By Mr. STROTHER: A bill (H. R. 7250) to amend the act of Congress approved March 4, 1913; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7251) to authorize the acquisition of a site and the erection of a Federal building at Princeton, W. Va.; to the Committee on Public Buildings and Grounds.

By Mr. NELSON of Maine: A bill (H. R. 7252) to provide for the purchase of a site and the erection of a public building thereon at Southwest Harbor, Me.; to the Committee on Public Buildings and Grounds.

By Mr. GREENWOOD: A bill (H. R. 7253) to authorize the acquisition of a site and the erection of a Federal building at Martinsville, Ind.; to the Committee on Public Buildings and Grounds.

By Mr. CONNALLY of Texas: A bill (H. R. 7254) for the acquisition of additional ground adjoining the Federal building at Waco, Tex., and the erection thereon of an addition to such Federal building, and authorizing an appropriation therefor; to the Committee on Public Buildings and Grounds.

By Mr. DICKSTEIN: A bill (H. R. 7255) to regulate the sale of kosher meat in the District of Columbia; to the Committee on the District of Columbia.

By Mr. WELLER: A bill (H. R. 7256) to amend the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7257) to amend the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7258) to amend the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7259) to amend the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7260) to amend the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7261) to amend the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7262) to amend paragraph 709 of schedule 7, section 1, Title I of the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7263) to amend paragraph 711 of schedule 7, section 1, of Title I of the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7264) to amend paragraph 712 of schedule 7, section 1, of Title I of the tariff act of 1922; to the Committee on Ways and Means.

Also, a bill (H. R. 7265) to amend paragraph 713 of schedule 7, section 1, of Title I of the tariff act of 1922; to the Committee on Ways and Means.

By Mr. FULMER: A bill (H. R. 7266) to provide for the establishment of a dairying and livestock experiment station at or near Columbia, S. C.; to the Committee on Agriculture.

Also, a bill (H. R. 7267) granting allowances for rent, fuel, light, and equipment to postmasters of the fourth class, and for other purposes; to the Committee on the Post Office and Post Roads.

By Mr. BULWINKLE: A bill (H. R. 7268) to authorize the acquisition of a site and the erection thereon of a Federal building at Lincolnton, N. C.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7269) to authorize the acquisition of a site and the erection thereon of a Federal building at Kings Mountain, N. C.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7270) to authorize the acquisition of a site and the erection thereon of a Federal building at Newton, N. C.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7271) to authorize the acquisition of a site and the erection thereon of a Federal building at Morganton, N. C.; to the Committee on Public Buildings and Grounds.

By Mrs. KAHN: A bill (H. R. 7272) to amend the national prohibition act to permit 2.75 per cent beverage; to the Committee on the Judiciary.

By Mr. MONTAGUE: A bill (H. R. 7273) to provide for the enlargement of the present post-office building at Richmond, Va.; to the Committee on Public Buildings and Grounds.

By Mr. KOPP: A bill (H. R. 7274) to provide for the erection of a public building at Fairfield, Iowa; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7275) to provide for the purchase of a site and the erection of a public building thereon at Mount Pleasant, Iowa; to the Committee on Public Buildings and Grounds.

By Mr. TINCHER: A bill (H. R. 7276) to authorize the Commissioner of the General Land Office to dispose by sale of certain public land in the State of Kansas; to the Committee on the Public Lands.

By Mr. MERRITT: A bill (H. R. 7277) to authorize the sale of a parcel of land in the town of Westport, Conn.; to the Committee on Military Affairs.

By Mr. JOHNSON of South Dakota: A bill (H. R. 7278) to equalize the promotion list of the Regular Army; to the Committee on Military Affairs.

By Mr. BEEDY: A bill (H. R. 7279) for the erection of a monument to Jeremiah O'Brien; to the Committee on the Library.

By Mr. JONES: A bill (H. R. 7280) for the erection of a public building in the city of Childress, county seat of Childress County, State of Texas, and appropriating money therefor; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7281) for the erection of a public building in the city of Quanah, county seat of Hardeman County, State of Texas, and appropriating money therefor; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7282) for the erection of a public building in the city of Memphis, county seat of Hall County, State of Texas, and appropriating money therefor; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7283) for the erection of a public building in the city of Plainview, county seat of Hale county, State of Texas, and appropriating money therefor; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 7284) for the erection of a public building in the city of Lubbock, county seat of Lubbock County, State of Texas, and appropriating money therefor; to the Committee on Public Buildings and Grounds.

By Mr. O'CONNELL of Rhode Island: A bill (H. R. 7285) to amend the World War veterans' act, 1924; to the Committee on World War Veterans' Legislation.

By Mr. ZIHLMAN: A bill (H. R. 7286) to provide for the acquisition of property in Prince William County, Va., to be used by the District of Columbia, for the reduction of garbage; to the Committee on the District of Columbia.

Also, a bill (H. R. 7287) to provide for the elimination of the Michigan Avenue grade crossing in the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

By Mr. HARE: A bill (H. R. 7288) for the purchase of cotton to be held in reserve as a munition of war, and for other purposes; to the Committee on Military Affairs.

By Mr. SUTHERLAND: A bill (H. R. 7289) to amend the organic act for the Territory of Alaska, and for other purposes; to the Committee on the Territories.

By Mr. PORTER: Joint resolution (H. J. Res. 111) to provide for the expenditure of certain funds received from the Persian Government for the education in the United States of Persian students; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ADKINS: A bill (H. R. 7290) to reimburse Frank A. Reese on account of loss of postal funds; to the Committee on Claims.

By Mr. BAILEY: A bill (H. R. 7291) granting a pension to Sarah Jane McDaniel; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7292) granting an increase of pension to Sarah C. Hazen; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7293) granting an increase of pension to Mary E. Powers; to the Committee on Invalid Pensions.

By Mr. BEGG: A bill (H. R. 7294) granting an increase of pension to Calista A. Shuman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7295) granting a pension to Lottie E. Marka; to the Committee on Invalid Pensions.

By Mr. BULWINKLE: A bill (H. R. 7296) granting an increase of pension to Robert H. Beatty; to the Committee on Pensions.

Also, a bill (H. R. 7297) granting an increase of pension to George Davis; to the Committee on Pensions.

Also, a bill (H. R. 7298) granting an increase of pension to Banner Chandley; to the Committee on Pensions.

Also, a bill (H. R. 7299) granting an increase of pension to Synthia Freeman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7300) granting a pension to Hoy Brinkley; to the Committee on Pensions.

Also, a bill (H. R. 7301) granting a pension to Sallie Garland; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7302) granting a pension to Malissie Honeycutt; to the Committee on Pensions.

Also, a bill (H. R. 7303) for the relief of F. R. Baker; to the Committee on Claims.

By Mr. BYRNS: A bill (H. R. 7304) to compensate Robert F. Yeaman for the loss of certain carpenter tools which was incurred by reason of a fire in the Government area at Old Hickory Ordnance Depot; to the Committee on Claims.

By Mr. CLEARY: A bill (H. R. 7305) for the relief of William C. Schmitt; to the Committee on Claims.

By Mr. DEAL: A bill (H. R. 7306) to extend the time for institution of proceedings authorized under Private Law No. 81, Sixty-eighth Congress, being an act for the relief of Henry A. Kessel Co. (Inc.); to the Committee on Claims.

By Mr. DICKINSON of Iowa: A bill (H. R. 7307) for the relief of B. I. Salinger; to the Committee on Claims.

By Mr. FAIRCHILD: A bill (H. R. 7308) for the relief of the children of William Wheeler Hubbell and his wife, Elizabeth Catherine Hubbell, both deceased; to the Committee on Claims.

By Mr. FOSS: A bill (H. R. 7309) granting a pension to Mary E. Harris; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7310) granting an increase of pension to Susan Rebecca Adams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7311) granting an increase of pension to Michael Roberts; to the Committee on Pensions.

By Mr. FREAR: A bill (H. R. 7312) granting a pension to Casandra P. Dyer; to the Committee on Invalid Pensions.

By Mr. GARDNER of Indiana: A bill (H. R. 7313) granting a pension to Martha Fried; to the Committee on Invalid Pensions.

By Mr. HALE: A bill (H. R. 7314) granting an increase of pension to Arophine C. Knox; to the Committee on Invalid Pensions.

By Mr. HALL of Indiana: A bill (H. R. 7315) granting a pension to Rebecca J. Fraim; to the Committee on Invalid Pensions.

By Mr. HOLADAY: A bill (H. R. 7316) granting a pension to Vivian L. Saunders; to the Committee on Pensions.

By Mrs. KAHN: A bill (H. R. 7317) granting an increase of pension to Richard Burns; to the Committee on Pensions.

Also, a bill (H. R. 7318) for the relief of William Eckman; to the Committee on Claims.

Also, a bill (H. R. 7319) to correct the military record of William J. Murphy; to the Committee on Naval Affairs.

By Mr. KIESS: A bill (H. R. 7320) granting a pension to George O. Pratt; to the Committee on Invalid Pensions.

By Mr. KING: A bill (H. R. 7321) granting a pension to Augusta Morey; to the Committee on Invalid Pensions.

By Mr. McKEOWN: A bill (H. R. 7322) granting an increase of pension to Mary J. Cansler; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7323) granting an increase of pension to Julia Hofeld; to the Committee on Invalid Pensions.

By Mr. McLAUGHLIN of Nebraska: A bill (H. R. 7324) granting an increase of pension to Mary Pike; to the Committee on Invalid Pensions.

By Mr. MAJOR: A bill (H. R. 7325) granting a pension to Mary J. Hays; to the Committee on Invalid Pensions.

By Mr. MENGES: A bill (H. R. 7326) granting an increase of pension to Mary E. Robison; to the Committee on Invalid Pensions.

By Mr. MURPHY: A bill (H. R. 7327) granting an increase of pension to Lib E. Orr; to the Committee on Invalid Pensions.

By Mr. PERKINS: A bill (H. R. 7328) for the relief of George S. Conway; to the Committee on War Claims.

By Mr. PURNELL: A bill (H. R. 7329) granting an increase of pension to Melissa A. Anthony; to the Committee on Invalid Pensions.

By Mr. RATHBONE: A bill (H. R. 7330) granting a pension to Della Healea; to the Committee on Pensions.

By Mr. RAINEY: A bill (H. R. 7331) granting a pension to Sophia A. Weaver; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7332) granting a pension to Lou Ogden; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7333) granting a pension to Ernest Reed; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7334) granting a pension to Martha J. Crichfield; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7335) granting a pension to Peter Workman; to the Committee on Pensions.

Also, a bill (H. R. 7336) granting a pension to Laura C. Frederick; to the Committee on Pensions.

Also, a bill (H. R. 7337) granting a pension to Nancy Simpson; to the Committee on Pensions.

Also, a bill (H. R. 7338) granting an increase of pension to Jefferson Lawson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7339) granting an increase of pension to Newton Goldman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7340) granting an increase of pension to Almyra Henderson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7341) granting an increase of pension to Mary Catherine Whitlock; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7342) granting an increase of pension to Harry Brown; to the Committee on Pensions.

Also, a bill (H. R. 7343) granting an increase of pension to William Thomas; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7344) granting an increase of pension to Ellen E. Hermans; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7345) granting an increase of pension to John H. Crim; to the Committee on Pensions.

Also, a bill (H. R. 7346) granting an increase of pension to Martha J. Frank; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7347) granting an increase of pension to Daniel M. White; to the Committee on Invalid Pensions.

By Mr. SEARS of Nebraska: A bill (H. R. 7348) for the relief of Joseph F. Becker; to the Committee on Naval Affairs.

By Mr. SINNOTT: A bill (H. R. 7349) granting a pension to John A. Smith; to the Committee on Invalid Pensions.

By Mr. SMITH: A bill (H. R. 7350) granting an increase of pension to Thomas A. Brassfield; to the Committee on Pensions.

Also, a bill (H. R. 7351) granting an increase of pension to Abbie E. Buck; to the Committee on Invalid Pensions.

By Mr. SPEAKS: A bill (H. R. 7352) for the relief of Lester Cooley; to the Committee on Military Affairs.

By Mr. WEAVER: A bill (H. R. 7353) granting a pension to Nancy E. Carter; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7354) granting an increase of pension to Cynthia Smith; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7355) granting an increase of pension to Jesse Cunningham; to the Committee on Pensions.

By Mr. WOOD: A bill (H. R. 7356) granting a pension to Margaret H. Haan; to the Committee on Pensions.

By Mr. WOODRUM: A bill (H. R. 7357) to pay to the heirs of J. H. McVeigh, deceased, the sum of $10,375; to the Committee on Claims.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

321. By Mr. BLOOM: Petition of the Merchants' Association of New York, supporting the debt-funding agreements negotiated by the American Debt Commission; to the Committee on Foreign Affairs.

322. Also, petition of Frank W. Zedren and others, suggesting a scientific inspection of the United States patent 1355656, named "Avythistos," and the adoption by the proper naval authorities for the benefit of American marine; to the Committee on Naval Affairs.

323. By Mr. BROWNE: Petition of the county of Green, Wis., remonstrating against the repeal of the Federal aid road law; to the Committee on Roads.

324. Also, petition of the Portage County, Wis., board of supervisors, against the repeal of the Federal road law; to the Committee on Roads.

325. By Mr. BYRNS: Petition in support of the claim of Robert F. Yeaman; to the Committee on Claims.

326. By Mr. DARROW: Memorial of the Philadelphia Board of Trade, in behalf of favorable action upon the debt-funding agreements as submitted by the American Debt Commission; to the Committee on Ways and Means.

327. By Mr. HILL of Maryland: Petition on the subject of nonquota immigrants adopted by the American Jewish Congress in session assembled, October 25 and 26, 1925, at Philadelphia, Pa.; to the Committee on Immigration.

328. Also, petition adopted by the American Federation of Labor, against the formation of bread trust; to the Committee on Interstate and Foreign Commerce.

329. By Mr. KVALE: Petition of Mrs. Elizabeth Haugen and Ole Haugen, protesting against the entrance of this Nation into the World Court; to the Committee on Foreign Affairs.

330. By Mr. LINEBERGER: Petition of Henry Z. Osborne, Unit No. 103, United Veterans of the Republic, Department of California, signed by Charles F. Dodd, and approximately 2,000 other citizens, praying for the enactment of the pension legislation sponsored by the national organizations of the United Spanish War Veterans, the Grand Army of the Republic, and the Indian war veterans; to the Committee on Pensions.

331. By Mr. MOONEY: Petition of citizens of Cleveland, Ohio, protesting the suspension of Col. William Mitchell; to the Committee on Military Affairs.

332. Also, petition of members of Northern Ohio Druggists' Association, urging early hearing on House bill 11, the price maintenance bill; to the Committee on Interstate and Foreign Commerce.

333. Also, petition of students of Spencerian School, Cleveland, Ohio, favoring extension of vocational training period; to the Committee on World War Veterans' Legislation.

334. By Mr. NEWTON of Minnesota: Resolution of the Minneapolis Principals' Forum, favoring the establishment of a Federal department of education; to the Committee on Education.

335. Also, resolution of the Minneapolis Principals' Forum, indorsing the entry of the United States into the Permanent Court of International Justice; to the Committee on Foreign Affairs.

336. Also, resolution by the Minneapolis and St. Paul joint local executive board of the United Brewery, Flour, Cereal, and Soft Drink Workers International Union, calling upon the Congress of the United States to conduct an investigation of the so-called Bread Trust; to the Committee on Interstate and Foreign Commerce.

337. Also, resolution by the Central Labor Union of the city of Minneapolis, requesting Congress to investigate the so-called Bread Trust; to the Committee on Interstate and Foreign Commerce.

SENATE

MONDAY, *January 11, 1926*

(Legislative day of Thursday, January 7, 1926)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

PNEUMATIC-TUBE SERVICE, BOSTON, MASS. (S. DOC. NO. 35)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Post Office Department, fiscal year ending June 30, 1927, for the reestablishment of a pneumatic-tube service in the city of Boston, Mass., in amount $24,000, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

CLAIMS OF BETHLEHEM STEEL CO. EMPLOYEES (S. DOC. 37)

The VICE PRESIDENT laid before the Senate a communication from the Secretary of War, relative to the claims of certain employees of the Bethlehem Steel Co. under the award of the National War Labor Board of July 31, 1918, "in accordance with the interpretations and the classifications and adjustments made under the direction of the board in pursuance of such award," which, with the accompanying papers, was referred to the Committee on Claims and ordered to be printed.

WITHDRAWALS AND RESTORATIONS OF PUBLIC LANDS

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting a report of the Commissioner of the General Land Office, dated January 6, 1926, relative to withdrawals and restorations of public lands under the act of June 25, 1910 (36 Stat. 847), during the period from December 1, 1924, to November 30, 1925, inclusive, which, with the accompanying statement, was referred to the Committee on Public Lands and Surveys.

FRED A. GOSNELL AND RICHARD C. LAPPIN

The VICE PRESIDENT laid before the Senate a communication from the Assistant Secretary of Commerce, transmitting draft of a proposed bill to relieve Fred A. Gosnell, former disbursing clerk, Bureau of the Census, and the estate of Richard C. Lappin, former supervisor of the Fourteenth Decennial Census for the Territory of Hawaii and special disbursing agent in the settlement of certain accounts, which the department recommends be enacted into law during the present session, which, with the accompanying paper, was referred to the Committee on Claims.

PETITIONS AND MEMORIALS

Mr. WARREN presented a petition of sundry citizens of Converse County, Wyo., praying for continuation of the policy of restricted immigration, which was referred to the Committee on Immigration.

He also presented a petition of sundry citizens of Washakie County, Wyo., praying for the repeal or substantial modification of the prohibition enforcement act, which was referred to the Committee on the Judiciary.

Mr. BINGHAM presented a resolution adopted by the Bar Association of Hawaii, favoring the participation of the United States in the Permanent Court of International Justice, with the reservations recommended by Presidents Harding and Coolidge, which was ordered to lie on the table.

Mr. WILLIS presented a memorial of sundry citizens of Hocking County, Ohio, remonstrating against the participation of the United States in the Permanent Court of International Justice, which was ordered to lie on the table.

Mr. COPELAND. Mr. President, I present a petition numerously signed by constitutents who are members and attendants of the Flatbush Congregational Church, of Brooklyn, N. Y. I ask that the petition may lie on the table and that the body of it may be printed in the RECORD.

There being no objection, the petition was ordered to lie on the table and to be printed in the RECORD, as follows:

MEMORIAL TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES

We, the undersigned, members and attendants of the Flatbush Congregational Church, Dorchester Road and East Eighteenth Street, Brooklyn, N. Y., do hereby express ourselves in favor of the entry by the United States of America into the World Court, subject to such reservations as may be deemed advisable by the Congress.

DECEMBER 20, 1925.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FLETCHER:

A bill (S. 2327) for the development of the fishery resources of the South Atlantic States, and other purposes; to the Committee on Commerce.

By Mr. KEYES:

A bill (S. 2329) granting an increase of pension to Leroy E. Smith; to the Committee on Pensions.

By Mr. SWANSON:

A bill (S. 2330) for the relief of Phil. P. Goodman, former second lieutenant, United States Marine Corps; to the Committee on Naval Affairs.

By Mr. HARRELD:

A bill (S. 2331) granting a pension to Joseph A. Branstetter; and

A bill (S. 2332) granting an increase of pension to Augusta Myers; to the Committee on Pensions.

A bill (S. 2333) for the relief of Maj. Charles P. Hollingsworth; to the Committee on Military Affairs.

A bill (S. 2334) authorizing the sale and conveyance of certain lands on the Kaw Reservation in Oklahoma; to the Committee on Indian Affairs.

By Mr. BINGHAM:

A bill (S. 2335) for the relief of the Andrew Radel Oyster Co. (with accompanying papers); and

A bill (S. 2336) to reimburse Commander Walter H. Allen, civil engineer, United States Navy, for losses sustained while carrying out his duties (with accompanying papers); to the Committee on Claims.

A bill (S. 2337) to amend the act entitled "An act for making further and more effectual provision for the national defense, and for other purposes," approved June 3, 1916, as amended, and for other purposes; and

A bill (S. 2338) authorizing the President to reappoint Chester A. Rothwell, formerly a captain of Engineers, United States Army, an officer of Engineers, United States Army (with accompanying papers); the Committee on Military Affairs.

By Mr. STANFIELD:

A bill (S. 2339) to amend section 27 of the general leasing act approved February 25, 1920 (41 Stat. L. p. 437); to the Committee on Public Lands and Surveys.

By Mr. ODDIE:

A bill (S. 2340) for the adjustment of water right charges on the Newlands irrigation project, Nevada, and for other purposes; to the Committee on Irrigation and Reclamation.

By Mr. HARRIS:

A bill (S. 2341) authorizing appropriation of $100,000 for the erection of a monument or other form of memorial at Jasper Spring, Chatham County, Ga., to mark the spot where Sergt. William Jasper, a Revolutionary hero, fell; to the Committee on the Library.

A bill (S. 2342) to preserve Fort Pulaski, near Savannah, in Chatham County, Ga., as a national military memorial park on account of its historic interest in Revolutionary times and since; to the Committee on Military Affairs.

A bill (S. 2343) providing for the examination and survey of Ogeechee River, Ga.; to the Committee on Commerce.

A bill (S. 2344) granting a pension to Sarah B. Arnett; to the Committee on Pensions.